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IN THIS ISSUE

RECENT international political events confirm, in an unmistakable way, the fact that existing political peace machinery is being made useless, if not scrapped, by new political alignments. The world today is apparently faced with the necessity of finding a new and stronger type of peace machinery through world trade channels and a considerable portion of this issue of THE JOURNAL is devoted to the efforts of groups and organizations that are expanding, developing and organizing international economic peace machinery for achieving world peace on the broader and more endurable foundation of trade relations.

The slogan adopted at the opening of the new World Headquarters of the International Business Machines Corporation and which its President, Thomas J. Watson, describes in this issue (p. 158) is World Peace through World Trade.

Strengthening, rebuilding and expanding international economic peace machinery—a program—is the subject of the Foreword (p. 108).

How the world goes forward with its work for peace, despite the darkness of the hour, is told by Mr. Boissier, in the economic world (p. 165) and by Miss Wambaugh, in the political realm (p. 163).

The Common Sense of Arbitrations comes to us from England (p. 113), showing how close in theory and practice are the English-speaking nations.

In the United States, the story is told of how Safety Second joins the Safety First campaign against the high costs of personal injuries and the hardships caused by justice long delayed (p. 118).

Among the Notes and Comments (pp. 125 and 145), the N. Y. Stock Exchange, the N. Y. State Real Estate Board, the Dress Industry, the Hotel Association of New York, the General Electric Company, department stores and the Millinery Industry are found in the vanguard that leads commercial and industrial peace in the United States.

The century-old statement that "Copartnery is the mother of discord" is revived by the awards presented in this issue (p. 132).

South America records the adoption of a new arbitration law in Colombia and a sharp advance in educational work (p. 187).

FOREWORD

STRENGTHENING INTERNATIONAL ECONOMIC PEACE MACHINERY

IN the first issue of THE JOURNAL the Foreword set forth the fact that the American Arbitration Association had dedicated itself to the task of establishing a science of arbitration that would serve mankind in its aspirations toward amity and justice no less effectively than other sciences serve mankind in other relationships.[1]

Since that statement was made, commercial arbitration in the Americas has been immensely strengthened and labor arbitrations in the United States have been fitted into the plan, thereby fortifying the American base for the maintenance of peace and goodwill.[2]

The Association now turns to another aspect of its undertaking to build a science of arbitration, namely the rebuilding, strengthening and expansion of international economic peace machinery from this solid base of American experience and achievement in commercial and industrial arbitration.

Following its plan of establishing standards for its guidance[3] the Association is proceeding along the following lines in the construction and expansion of international economic peace machinery.

1. Arbitration, which determines an issue on the basis of fact and evidence under established rules of procedure and by formal proceedings, offers the best assurance of a just and final decision and of the maintenance of goodwill.
2. The basis of contract is fundamental to any system of economic peace machinery and its use must generally prevail, carrying in such contracts provisions for arbitration.

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[1] Vol. 1, p. 1.

[2] See divisions of THE JOURNAL this year into commercial and industrial sections covering the progress of this idea and which describe the work of the Commercial Arbitration Tribunals and of the Voluntary Industrial Arbitration Tribunal.

[3] For American commercial standards, see Vol. 1, p. 6; and for inter-American commercial standards see p. 192 this issue. For industrial standards, see Vol. 1, p. 403.

3. Established procedure is an essential to the maintenance of both good faith and goodwill, without which economic peace machinery will fail in its objective of preserving peace.
4. The separation of economic peace machinery from governmental domination is indispensable to the maintenance of its impartial and nonpartisan character and it must function within the economic structure in accordance with economic law.
5. Economic peace machinery is universal in its application and must, therefore, eventually include industrial, labor and agricultural interests in an integrated system that fortifies trade routes and centers and markets against the invasion of ill-will and the perils of controversy.
6. Resort to arbitration is voluntary even though the observance of the contract and the award may be based upon law.
7. Technical education in the knowledge and use of economic peace machinery is indispensable to its general acceptance.

In its program for the rebuilding, strengthening and expansion of economic peace machinery the Association outlines the following plan now under way:

IN THE UNITED STATES

The Association is undertaking the strengthening of its own border machinery in the United States by establishing arbitration facilities equipped to handle controversies involving foreign trade. These facilities will cover the Canadian and American borders and Atlantic, Pacific, Lake and Gulf ports and may have the cooperation of the National Foreign Trade Council, foreign trade clubs and foreign departments of banks and such other economic agencies as are interested. This development will supplement the system now covering 1,600 American cities and serving local and interstate trade.

An important element in strengthening American international machinery are the negotiations now pending with the International Chamber of Commerce, by which the facilities of its Court of Arbitration will be made available in the United States under special rules that will make awards legally enforceable in this country.

Another aspect of strengthening American international machinery are the negotiations with the Honolulu Chamber of Commerce with a view to establishing facilities for the United States-Hawaiian trade routes; and the negotiations with the Philippine Chamber of Commerce, strengthening the economic peace machinery for that trade route.

BETWEEN THE AMERICAS

The strengthening and extension of inter-American facilities for commercial arbitration, as established by the Inter-American Commercial Arbitration Commission under the auspices of the Pan American Union, are being steadily carried forward. These activities will be the subject of a report to be made by the Commission to the Eighth International Conference of American States meeting in Lima in December of this year.

RECIPROCAL TRADE AGREEMENTS

The adoption of reciprocal trade agreements as a basis of peace, as well as for increasing trade between nations, offers the opportunity, and may create the necessity, for the expansion of economic peace machinery along these trade routes. New legislation, such as that creating foreign trade zones, indicates the necessity for such machinery.[4]

It is proposed to create such machinery along these trade routes and in these zones. The Association is beginning with Canada and has in process of negotiation the establishment of Canadian-American economic machinery which will make the use of arbitration clauses practical in Canadian-American contracts. Trade agreements have now been concluded between the United States and each of the following countries, exclusive of American Republics which already have a system of inter-American facilities: Belgium, Sweden, The Netherlands, Switzerland, France, Finland and Czechoslovakia.

In establishing economic peace machinery between the United States and individual countries with which it has reciprocal trade agreements, the purpose is to have the collaboration of corporations engaged in foreign trade, and of commercial agencies and trade associations in each country, thus creating stronger ties through these economic groups. It is the belief that the Canadian-American set-up will serve as a model for this machinery and it is the first being perfected.

AT THE HAGUE

With changing forms of government in which the State and private enterprise are increasingly indistinguishable, many con-

[4] See *Arbitration in United States Foreign Trade Zones*, Vol. 2, p. 57

tracts are executed in which the nationals of one country and the government of another are parties. This type of controversy calls at times for a different type of machinery. The facilities of the Permanent Court of Arbitration at The Hague are available for the disposal of such controversies. They possess the advantages of being universal and of being established by Conventions to which states are signatory, but of leaving the machinery itself free for private operation. The extension of the knowledge of the availability of this machinery and its more elastic use may well become part of a plan for rebuilding and strengthening economic peace machinery.[5]

LABOR IN ECONOMIC PEACE MACHINERY

The rapid development in different countries[6] of the use of arbitration to settle labor disputes and the rapid progress being made in the use of labor contracts containing arbitration clauses, as the accepted method of regulating labor relations, indicate a not far distant day when some international labor machinery will become a necessary part of economic peace machinery. The migrations of people, the rise to power of labor groups, the international employment of men, different standards of employment—these conditions and the Conventions being adopted by the states to establish standards indicate still further that the establishing of peace machinery may well follow in the wake of such events and agreements.

In the United States, the Association has established and is operating voluntary industrial arbitration tribunals for the disposal of issues arising under labor contracts; and they are being carried steadily forward in accordance with established standards.[7] The Association is exploring this field with a view to discussing this problem with such agencies as the International Labour Office when the conditions seem to call for the use of such machinery.

TECHNICAL EDUCATION

In the field of international economic peace machinery, there is a need for more precise knowledge of such machinery and more

[5] See *Idle Machinery at The Hague*, Vol. 1, p. 217.

[6] See *Report on Conciliation and Arbitration in Industrial Disputes* by the International Labour Office (1933).

[7] Arbitration Journal, Vol. 1, p. 403.

definite instruction in its use. Our effort, therefore, turns to technical education, planned and executed through the many channels open to the Association.

These include conferences, special and general publications, inclusion of speakers on appropriate programs, the radio, the press and world fairs. It is largely a question of organizing most effectively the information through the most available channels within the resources of the Association. This JOURNAL is one effective medium and its different sections contain many references to the education being disseminated through different channels and organizations in accordance with the central idea that organized knowledge is of the very essence of a science of arbitration.

INITIATION OF THE PLAN

The celebration of National Foreign Trade Week in the United States, during the week of May 22, will be the occasion for inaugurating this Plan.[8] It will be opened by an aviation luncheon in honor of the President of the Pan American Airways, to be followed immediately by the organization of the Services indicated above, which will unite the economic peace forces and create new centers and methods of education, as well as provide machinery for the settlement of disputes.

[8] See p. 182 for statement on National Foreign Trade Week.

AMERICAN COMMERCIAL ARBITRATION*

THE COMMON SENSE OF ARBITRATIONS [1]

BY

DAVID M. LAWRANCE, B. SC., BARRISTER-AT-LAW

ARBITRATION is essentially the business man's method of settling disputes, and he likes to feel that the rules of law which govern it are as few and as simple as possible.

The purpose of these articles is to emphasize the common sense reasoning which underlies most of the rules regulating the conduct of arbitrations, and to show that so long as the lay arbitrator proceeds in accordance with the general principles of justice which should govern all judicial proceedings, he runs little risk of interference from the Court, either as regards his conduct of the case or his award.

THE POSITION OF THE ARBITRATOR

An arbitration is the judicial determination of a dispute by an arbitrator or arbitrators appointed by persons who have chosen that method in preference to taking their case to a court of law.

* Court decisions relating to commercial arbitration will be found in the Section on Arbitration Law, beginning on p. 193.

[1] Mr. Lawrance is contributing a series of six articles on The Common Sense of Arbitrations to the Journal of The Institute of Arbitrators (London). These are being reprinted in part in the JOURNAL through the courtesy of The Institute of Arbitrators (Incorporated), the first one appearing in this issue. Although the English Arbitration Law differs in certain respects from the American Law, the general principles are so clearly stated by Mr. Lawrance that they cannot fail to interest our American and foreign readers [Ed.].

Provided that the arbitration agreement is valid, that there is no defect on the face of the award and no irregularity in the conduct of the reference, the arbitrator's decision will be a final settlement of the dispute.

The law recognizes the right of a subject to have his differences settled in this way if he wishes, but it is concerned to see that he receives the same measure of justice as would be enjoyed in one of its own courts.

In a court of law, the facts of a case are first established by evidence produced by either side, and the court then applies recognized principles of law to those facts in deciding the rights of the parties. Similarly, in an arbitration it is the duty of the arbitrator to conduct a judicial inquiry into the matters referred to him. He is not appointed, as a valuer is, to decide a question solely in the light of his special knowledge and experience; he is appointed to give a full and impartial hearing to all relevant evidence brought before him, and to make his award in accordance with that evidence.

In coming to his decision, the arbitrator must be governed by the legal rights of the parties. So far as he knows the law, it is his duty to apply it to the facts established at the reference. He is not entitled to substitute what he might himself regard as a just and reasonable settlement of the dispute.

Since he is virtually in the position of a judge, the arbitrator is bound to observe the ordinary rules laid down for the administration of justice.[2] Except in those rare cases where *ex parte* procedure is justified, the parties must be heard in the presence of each other. The arbitrator must not receive communications from one side behind the back of the other, nor, except with the other side's consent, take a statement from a person in the presence of one side only. Any departure from these rules will endanger the award irrespective of the nature of the statement or communication or whether or not it is likely to influence the arbitrator's decision.[3]

Because the arbitrator has been chosen by the parties to act as judge in their dispute, and is in a sense their agent for the administration of justice, it follows that he cannot delegate any part of his judicial authority to another. He cannot throw on another the onus of deciding some point for the decision of

[2] *Re Haigh* (1861) 3 De G. F. & J. 157.
[3] *Dobson* v. *Groves* (1844) 6 Q. B. 637.

which he alone is responsible. In coming to his decision he may have the benefit of the advice of lawyers, valuers, surveyors and scientific experts so long as he does not allow these persons to decide the case for him and provided he does not substitute their opinion for his own. But as a matter of practice, if he wants to seek expert opinion or advice beyond that given by the witnesses called at the reference, it is desirable that he should do so only with the knowledge and consent of both parties.

The arbitrator derives his authority solely from the submission or arbitration agreement under which he is appointed. He is clearly only authorized by the parties to act as their judge in respect of matters coming within the scope of that agreement. He cannot himself amend the submission because it is a contract between the parties. If they wish to bring before him fresh points not covered by their agreement he should see that the necessary amendment of the submission is made in writing and signed by the parties before evidence on those matters is admitted.

PRELIMINARY PROCEEDINGS

In all those preliminary matters which the arbitrator must settle in order to clear the ground for the actual hearing of the case, he has a wide discretion, with the exercise of which the Court is very loath to interfere. Such points are either dealt with at a preliminary meeting with the parties or their representatives, or by written communications with them.

It is essential in the first place to find out the precise points on which the parties are in difference, and to make sure that these can properly be referred under the terms of the submission. Frequently the submission will merely indicate that all disputes relating to a certain matter or transaction are agreed to be referred. It may then be desirable to limit the issues at the reference by ordering the claimant to deliver his Statement of Claim and the respondent his Points of Defense within certain reasonable time limits. If, on delivery of these, it appears that one party is fairly entitled to ask for further details of some matter raised in the other's pleadings, delivery of particulars may be ordered.

These are points which are entirely at the arbitrator's discretion. He need not order delivery of pleadings. If he does so it will be because his common sense suggests that it is the only practical way to narrow down the issues at the hearing so that

each side may know precisely the nature of the case it will have to meet.

Similar common sense reasoning governs the question of the amendment of pleadings. The pleadings do not constitute the submission, they are merely a precise statement by the parties of the matters in difference between them. It is within the arbitrator's discretion to allow either party to amend his pleadings at any stage of the proceedings so that a point covered by the submission, but not so far disclosed, may be referred.[4] On the other hand, he is not obliged to allow such an amendment.[5]

The Court is not inclined to interfere with the exercise of the arbitrator's discretion, but it has expressed for his guidance the view that he ought to allow any amendment which will give full effect to the submission without causing substantial injury to the other party.[6] In applying this principle, the arbitrator will no doubt bear in mind that there are few cases in which extra expense or inconvenience caused by amendment of pleadings cannot be put right by the judicious exercise of his discretion as to costs.

Another preliminary point to be decided is whether the arbitrator shall exercise his discretion to order discovery of documents. It will often considerably facilitate the hearing if the parties are required to state on affidavit what documents they have in their possession bearing on the points at issue in the reference. Discovery and mutual inspection of documents may prevent a party from complaining at the reference that he is unaware of the contents of documents put in as evidence by the other side.

It is desirable, too, to have an understanding as to whether the parties will be represented by counsel. Employment of counsel may be excluded by the submission,[7] although this is unusual, but in any case if one party intends to employ counsel the other should have notice of the fact. As was said in *Whatley* v. *Morland:* [8]

> "It is not reasonable that one party should have the assistance of counsel and the other not without at least having the option of employing counsel or not at his discretion."

[4] *Lloyd* v. *Sturgeon Falls Pulp Co.* (1901) 85 L. T. 162.
[5] *Re Creighton and Law Car & General Insurance Co.* (1910) 2 K. B. 738.
[6] *Ibid.*
[7] *Davidson* v. *Piper* (1848) 12 L. T. (O. S.) 195.
[8] (1834) 2 Cr. & M. 347.

It appears that it is within the arbitrator's discretion to refuse to hear counsel or a solicitor,[9] although obviously he would be unwise to adopt such a course unless there were strong reasons for doing so.

Should the arbitrator think it will assist him in weighing the evidence to be put before him at the reference, he may view the subject-matter of the dispute; but he cannot be compelled to view it unless the submission expressly so provides.[10] Since viewing the subject-matter of the dispute is in the nature of real evidence, both parties should have the opportunity of being present if they so desire.

On the question of the time and place of the actual hearing the arbitrator will naturally consult the convenience of the parties as well as his own, but provided he acts reasonably, the matter is entirely at his discretion.

Having fixed the date of the reference, he may at a later stage have to deal with an application for postponement or adjournment from one of the parties. In such a case the first thing to decide is whether the application is *bona fide*, or merely made for the purpose of delay. Assuming it to be *bona fide*, the question then arises whether, under the circumstances, it is reasonable to grant it.

Very often an adjournment is required to enable additional evidence to be called. If the evidence is important and there are good reasons why it is not yet available the arbitrator will be wise to grant the application.[11] But if he is convinced that it is irrelevant and unlikely to affect his decision he will be justified in refusing. In any case he should hear what the other party has to say on the matter.

It would seem that, provided the arbitrator acts honestly in exercising his discretion, the Court will not set aside his award even if it thinks he was in error in refusing to adjourn.[12]

Reference has already been made to the possibility of the arbitrator proceeding *ex parte*, in the presence of one side only.

Such a course can only be justified where, after fixing a reasonable time and place for the reference, one party deliberately fails to appear and offers no valid excuse for his absence.

[9] *Re MacQueen and Nottingham Caledonian Society* (1861) 9 C. B. (N. S.) 793.

[10] *Munday* v. *Black* (1861) 9 C. B. (N. S.) 557.

[11] *Re Enock and Zaretzky Bock & Co.* (1910) 1 K. B. 327.

[12] *Larchin* v. *Ellis* (1862) 11 W. R. 281.

Before proceeding *ex parte* it is desirable to serve a peremptory notice on both parties to the effect that in the event of either party absenting himself the arbitrator will proceed with the reference notwithstanding such absence.

SAFETY SECOND

BY

A. ALAN LANE *

A screeching of brakes, a warning cry, a scream of pain and terror—and a crowd collects about a still form.

Jones has been hurt. Despite the millions of dollars spent on safety campaigns, notwithstanding laws and regulations and motor cops and "Safety First" slogans eternally drummed into our consciousness, it has happened. One moment Jones was walking blithely along the highway; the next, he was jammed against a stone wall with a broken leg and other less obvious injuries.

It was not anybody's fault particularly. The roadway was wet, a car skidded—and there was Jones. An ambulance took him to the hospital, the doctor notified his family, his family notified his employer, and a new and strange life began for Jones. It took six weeks of doctors' and nurses' care, hospital treatment, x-rays and other medical assistance to put Jones back into commission as an active member of society.

But what happened to Jones himself? The immediate result of his accident was a stack of bills, an uncertain future, a load of worry, a stiff leg and a sour outlook on life in general.

He needed not only medical treatment, but character stabilization as well. Shocked by his accident and hounded by worry over his family, the loss of his job and heavy expenses, he faced an utterly changed future—a future that required social readjustment.

But Jones was to get something else out of his accident: an unforgettable experience with the wheels of justice. He was to find himself a helpless pawn between two great opposing forces in a tug of war—that small warfare called litigation.

* Chairman, Committee on the Municipal Court, New York County Lawyers' Association; Member of Committee on the City Court of the City of New York, Bar Association of the City of New York.

As soon as he was able to see anyone, a stranger appeared. Announcing himself as a lawyer, he told Jones that the owner of the car was insured and all that Jones had to do was to sue the owner, the insurance company would defend the action and all his worries would be over, bills would be paid, the family taken care of and a new job found. The fact that Jones had no money was no barrier to the realization of this golden dream, for the lawyer would take the risk for half of what was received. No recovery—no fee, was his motto.

Later Jones had another caller. The owner of the offending car notified his insurance company and an adjuster was sent to ascertain the extent of Jones' injuries and to offer a settlement. Jones was torn between the offer of urgently needed ready money and the promise held out by his lawyer. He succumbed to the latter and the suit was on; and so began the fight which was to drag over weary years. Thus, over the helpless injured man were pitted two contending forces in the name of the law—the counsel for the insurance company to whom the owner of the car transmitted his responsibility and the member of the bar to whom the injured man entrusted his future.

In the ensuing legal battle there was first the hunt for witnesses, and Jones learned that almost every one who had been near the scene of the accident could not be found or could not remember details, for these persons, more experienced than Jones with the law and its devious ways, had no notion of being drawn into its toils. Then, also, Jones heard for the first time about court calendars and discovered that there were several thousand injured persons ahead of him. He was, so to speak, on the waiting list in the ante-chamber of Justice—and Justice was "engaged" for the moment.

Jones became groggy from hearing about legal technicalities, forced adjournments, disappearing witnesses and other calamaties that seemed to clog his way to justice. He got the impression that his lawyer was unquestionably earning his half of the bargain, whatever it turned out to be.

Finally, when Jones was pretty thoroughly down, two years after the date of the injury, the date of the trial came. Badgered by counsel, shrinking from the glare of publicity, hampered in his straightforward recital of facts by legal technicalities, he somehow managed to tell his story, and a jury awarded him $1,000. When the fifty-fifty lawyer claimed his half, Jones had

$500 to pay the cost of this experience. What he thought of the law, the courts, automobile owners and society in general did not make him a happy member of society.

Something is wrong with a social structure that allows thousands of injured persons, through no fault of their own, to wait years for adjustment of their claims, that leaves them little alternative but to accept the fifty-fifty lawyer or settle for a small amount, and that subjects them to all of the risks of injury without friendly intervention or aid. The hospital, when it dismisses him; the car owner, when he transmits his responsibility to the insurance company; the company, when it pays the claim; and the lawyer, when he collects his fee—to all of these the injured man is a mere card in a filing case.

An experiment carried on in New York City during the last four years has taken many of these men out of the card files and has returned them to society, not only happier human beings but as better citizens, by reason of justice promptly done. In this experiment, the insurance companies, the parties and their lawyers, the courts, the American Arbitration Association, the State Insurance Department and the National Bureau of Casualty and Surety Underwriters have collaborated toward the definite ends of expediting settlements and relieving congested courts by taking a total of six thousand of these accident cases off the court calendars and referring them to arbitration in the Tribunal of the American Arbitration Association, under whose auspices the experiment is being conducted.

Smith's case was one of these six thousand. Smith was the owner of a small painting business. Proceeding one morning to a job in the Bronx, with his working equipment loaded into his automobile, he collided at a street intersection with a coal delivery truck, to the partial demolishment of himself, his car and equipment.

Smith blamed the accident upon the failure of the truck driver to give right of way. The owners of the truck, however, denied responsibility and the insurance company, to which Smith's claim was referred, refused to go beyond a small sum in settlement of the claim, in view of its client's denial of negligence. Smith, injured and with his business completely tied up by the loss of his car and equipment and with medical and repair bills to meet, was more fortunate than was Jones, for when his claim was filed in the court the insurance company offered him

the choice between immediate arbitration or a trial by jury at a distant date. Smith chose arbitration, whereupon the following events took place:

The American Arbitration Association, through which the insurance company transmitted the offer of arbitration, communicated with the attorneys for both sides upon Smith's acceptance of the offer and secured copies of their respective statements of the issue between Smith and the truck owner, the amount of the claim and other questions which were to be determined by arbitration.

Identical lists of arbitrators, taken from a special panel of lawyers and from which one arbitrator was to be selected by the Tribunal, were forwarded to both sides, with instructions to cross off the names of any to whom there was objection and to indicate preferences for the remaining names.

A time for the hearing, convenient to all concerned and to the arbitrator, was then arranged and notices of the hearing were sent out, with instructions to the parties to appear at the appointed time with their witnesses and the evidence they wished to present to the arbitrator.

The parties and witnesses met as scheduled in one of the hearing rooms of the Association and the hearing began promptly. There, in quiet, informal surroundings, free from rigid court rules and procedure, with the aid of miniature car models and a diagram of the street intersection, Smith and the truck driver and the witness told their stories of the occurrence. Smith had none of the difficulties in securing the attendance of witnesses he would have encountered if the case had gone to trial, probably two years later, and through a special arrangement, both his doctor and repair mechanic testified immediately and were promptly excused, with a minimum loss of time and of expense to Smith.

The arbitrator, having given each party and each witness a full opportunity to testify and to be cross-examined, then made his decision. Smith, having established by a preponderance of evidence his claim of negligence on the part of the driver of the truck, was awarded an amount to cover his personal injuries, cost of medical expenses and hospital treatment and of replacing his damaged car and equipment. Immediate payment of the claim and the rehabilitation of his business was assured, since the arbitrator's award was filed with the court in which

the action was pending and had the same force and effect as a judgment of the court.

Smith was happy, even though his claim had been somewhat reduced by the arbitrator, for he had secured prompt justice; his lawyer was gratified at the speed of the procedure and the opportunity to earn his fee quickly, with a minimum of overhead expense and carrying charges; the insurance company, in spite of having lost the case, was satisfied that it had lost fairly and benefited by having its required reserve reduced by the disposition of the claim.

The outstanding characteristics of the experiment above described, aside from the remarkable cooperation it has received, are that the arbitrator is a lawyer who serves without compensation; that the proceeding is free from legal technicalities and hard and fast court rules; that the injured person secures the arbitration service without cost to himself, as the defending company pays a filing and hearing fee in each case and there is no further cost to either party, and that the award of the arbitrator is final and may be entered as a judgment of the court.

The story of this cooperative effort is modestly told in a brief paragraph. In the period of four years since it was begun, more than 6,000 casualty cases involving injured persons have been submitted by attorneys for plaintiffs and by the 45 cooperating insurance companies. Of these, approximately 55 per cent have been arbitrated or settled in the course of the arbitral negotiations, 8 per cent are in process of negotiation and 37 per cent are still struggling along trying to obtain justice from overworked courts because the attorney for one of the parties clung to litigation. In 1937, nearly 2,000 cases were submitted for arbitration.

These cases have involved a wide variety of personal injuries and property damage suffered by persons in their own homes, on streets and highways and in public buildings. Automobile collisions head the list of causes of injury and damage, closely followed by escalators, elevators and other means of conveyance, slippery or broken steps and stairways, defective sidewalks and the like. Foreign and injurious substances in food account for the filing of many claims, while falling plaster ceilings and the leakage of poisonous gases from defective refrigerating and heating appliances take their toll of victims. Still other claims

have been filed for injuries caused by unfastened coal-holes, attacks of unmuzzled dogs and, in one case, the bite of a horse.

The experiment benefits so few, however, when it might help so many. If the injured person knew about arbitration and demanded it in preference to litigation he might save himself endless trouble and expense; if the lawyer realized that he could present the case to arbitration with no loss to himself, he would lessen the hazard to his client; if the insurance company, failing to adjust the claim, turned immediately to arbitration, it would be an excellent investment in goodwill and public welfare, as well as a saving to itself.

If business and the bar were to take the lead in extending the experiment, there would be the dawn of a better day for injured men and women, and Safety Second as well as Safety First would add to the social security of the victims of accidents.

ARBITRATION IN THE PRINTING TRADES

BY

C. FRANK CRAWFORD *

IN 1912, the Master Printer's Association of New York created a permanent Board of Commercial Arbitration, which became a part of the Federation of Graphic Industries when that came into existence. The idea, at the time of the Board's creation, was to have a body of men, each an expert in his line, representing every branch of the graphic arts and each willing to give his services for the benefit of the whole. No member has ever been paid and the only changes in the original personnel have been caused by death, which illustrates better than anything else the interest in the work.

The Board consists of 17 members and it is not unusual to have a full attendance at sessions. Until 1920 the Board functioned without any special legal authority and since then, under the existing laws of this State.

During the years, two outstanding features have been developed. The Board has improved in procedure, the members having come to be absolutely impersonal in hearing cases and able to distinguish facts from fables to a degree which any judge

* Chairman, Board of Commercial Arbitration of The Federation of Graphic Arts and Allied Industries of New York City.

might envy, and, what is more important in this work, have earned the complete confidence of those with troubles to be adjudicated. In many instances men have brought cases to the Board, had an award given against them, and when another trouble has come up, have asked the Board to hear that case. The litigants must take that Board as it is, although a member may disqualify himself if, for any reason, prejudice might be charged. The services of the Board are absolutely free to any one engaged in the industries, whether he be a member of a trade association or not.

The litigants are required to present their own cases and do so without interruptions or promptings and each party is permitted to cross-examine after both sides have been presented. Awards are issued without comment and cases may not be reopened except by mutual consent, in writing, of both parties. It has been proved that when a person is required to tell a story in the presence of a group of men recognized by him as experts in his business, and also in the presence of his opponent, unless his facts are sound, he soon "runs down". In other words, he has no lawyer to ask leading or suggestive questions; has no one arguing with him and thus suggesting ideas, and knows he cannot fool the jury and must tell the truth or nothing.

The chief advantage we members of the Graphic Industries find in the use of commercial arbitration over the regular courts of law is that, in presenting a case, it is not necessary to educate the jury in the language of the litigants before presenting the facts of the controversy, that the presentation is not encumbered by the rules of evidence and that the hearings are governed by common sense and not by legal technicalities; and as our Board accepts only cases in which matters of fact and not questions of law are involved, it is possible for us to render awards which we feel are just. Much harm has been done to the cause of commercial arbitration by lay-arbitrators endeavoring to decide questions of law—something which they are not qualified to do.

After being actively engaged in this work for 26 years, the author cannot urge too strongly the merits of the use of permanent Boards in all industries over the plan of selecting one or more arbitrators to listen to cases as they arise. In the matter of conducting hearings, our Board has learned much during the passing years and not the least is the plan followed by our Chairman of admonishing the witnesses, after administering the usual oath, that punishment for violation of that oath may not be

deferred until some indefinite hereafter, but that he may be punished while alive by incarceration in a State prison. We have had several instances where witnesses have come before us carefully coached with a prepared story and have refused to testify when so admonished. Litigants are encouraged, though not required, to present their arguments in writing, as it has been found that such a procedure aids in clarity and does away with the necessity of saying "You just said so-and-so", thereby saving time and reducing confusion in the minds of the members of the Board from oft-repeated and differently worded statements.

The outstanding causes of disputes as revealed by all the cases heard are: Trying to do work for which the shop is not equipped; substituting inferior material in the hope it will not be recognized; making allowances to the ultimate consumer and charging the amount of the allowance to some sub-contractor without first consulting that contractor; submitting completed work to a competitor of the original producer for an estimate and then insisting that the producer should accept that price which the competitor gave in the full knowledge that as the work is completed he will not be called upon to make good on his bid. These and hundreds of others are things which no one except a Board of experts could fairly pass upon. An important feature which the Graphic Industries has discovered in commercial arbitration is that the incorporation of an arbitration clause in all contracts is an insurance against many possible future troubles.

NOTES AND COMMENT

American Arbitration Association Elects New President. Franklin E. Parker, Jr., New York attorney and member of the law firm of Parker, Finley and Benjamin, was elected president of the American Arbitration Association at a meeting of directors and members of the Association held on Thursday, January 27, in New York City. Mr. Parker, a member of the class of 1922 of the Harvard Law School, is the first practicing lawyer ever to head the Association.

Lucius R. Eastman, former president, was elected Chairman of the Board of Directors, to succeed the late Felix M. Warburg, and George Backer was named Secretary of the Board to fill the vacancy caused by the death of James H. Post. Members of the

Board elected to fill vacancies are: Edwin H. Cassels, of the Chicago law firm of Cassels, Potter and Bentley; Henry Munroe Campbell, Detroit lawyer, and Lloyd K. Garrison, Dean of the Law School of the University of Wisconsin.

In assuming the presidency, Mr. Parker announced the Association's five-point program for the peaceful settlement of labor disputes, which is reported in the Industrial Arbitration Section of this issue (p. 151).

New York Stock Exchange Amends Arbitration Procedure. On January 25, 1935, Joseph P. Kennedy, then Chairman of the Securities and Exchange Commission, submitted to Congress a report on the Government of Stock Exchanges, in which 11 specific recommendations were made. Two of these recommendations referred to arbitration as conducted by the New York Stock Exchange: (1) that non-members be provided with a tribunal characterized by impartiality or in which both contending parties would have equal representation; and (2) that the cost of arbitration in the tribunal of the Stock Exchange be reduced.

Under the provisions of the amended Constitution, overwhelmingly approved by members of the New York Stock Exchange on March 17, a new system of arbitration is made available to non-members along the lines of Mr. Kennedy's recommendations. The Arbitration Committee will select two panels of arbitrators, the first composed of persons engaged in the securities business and the second composed of persons not so engaged. Any business dispute between a non-member and a member of the Exchange shall, at the instance of the non-member, be referred to five arbitrators who shall be selected by lot, one from the Arbitration Committee, one from the first of such panels and three from the second, non-members thus constituting a majority of any arbitration board. The decision of a majority of the arbitrators shall be final.

Proceedings will be conducted under rules prescribed by the Arbitration Committee, and the arbitrators may fix the costs of such an arbitration and determine how they shall be borne, but the costs payable by any party shall not exceed $25 in cases involving $500 or less, nor exceed $50 in cases involving more than $500 but not more than $1,000, thus reducing by one-half the fees previously in effect.

In order to make awards of the Arbitration Committee or of the arbitrators effective against members of the Exchange and registered firms, a new provision has been included in the Constitution, under which the Arbitration Committee is authorized, when an award remains unpaid for 30 days after it has become final, to certify such fact to the Committee on Admissions and such Committee may dispose of the membership of the delinquent and pay the award out of the proceeds.

The action taken by the Stock Exchange does not affect the policy of the Association of Stock Exchange Firms, many of the members of which have adopted a standard form of arbitration clause recommended by the Association and include in customers' agreements a provision under which the customer has the choice of arbitrating under the facilities of the Chamber of Commerce of the State of New York, the American Arbitration Association or the Arbitration Committee of the New York Stock Exchange.

The New York Stock Exchange has been conducting arbitrations since 1817 and is one of the oldest arbitration groups in the United States. During 1937 the Committee on Arbitration disposed of 13 cases to which non-members were parties, five of these having been decided in favor of the non-member, six in favor of the member, one case pending at the end of the year and one having been referred to the courts for lack of jurisdiction by the Committee. During the same period 10 cases involving only members of the Exchange were disposed of by the Committee on Arbitration.

Real Estate Brokers Plan Wider Use of Arbitration. Plans for encouraging the compulsory use of arbitration in settling disputes between real estate brokers and between brokers and clients have been announced by Frank S. O'Hara, president of the Real Estate Association of the State of New York. A special committee, headed by Percy M. Bibas, of the Westchester County Realty Board, has been named by Mr. O'Hara to sponsor the more widespread use of arbitration throughout the State.

Describing arbitration as "the spirit of the day in business", Mr. Bibas sees in the practice an opportunity to settle disputes amicably and without the expense of lawsuits, and announced that definite plans for a comprehensive program will be formulated after a survey of arbitration practices among boards throughout the State.

Serving on the arbitration committee with Mr. Bibas are: J. Howard Johnson of Albany, Fred Nehring of the Bronx, Harry M. Lewis of Brooklyn, Byron J. Erb of Buffalo, Fred A. Paquette of Norwich, George A. Kramer of Mineola, William J. Demorest of New York, John W. Jenny of Niagara Falls, Ralph Klonick of Rochester and Edward J. Nicoll of Troy.

Progress in Insurance Arbitration. Progress during the past year in the use of arbitration as a means of adjusting differences in the casualty insurance field was reported by Louis H. Pink, Superintendent of Insurance of the State of New York, in his annual report to the Legislature. In the section of the report devoted to insurance arbitration, Superintendent Pink said:

> "It is not only important to those who supervise insurance but to the business itself that insurance companies be fair and just to the individual policyholders and claimants in settling claims. Where disputes exist which are not adjustable through the ordinary channels of a fairly operated claim department, it is well to encourage methods for reaching a decision at a minimum of time and expense on both sides of the controversy.
>
> "The facilities offered by the American Arbitration Association have continued and have been used by insurance companies to a largely increased extent. Forty-five casualty companies have referred cases to this tribunal. More than twenty-seven hundred cases have been disposed of either by award or settlement during arbitration negotiations in the past three and one-half years. The extension of this method of settlement to other disputes arising out of insurance contracts should be seriously considered, in view of the success of arbitration in the casualty field."

Head of Pan American Airways to be Honored for Goodwill Activities. The week of May 22-28 has been designated as Foreign Trade Week in the United States, under the auspices of the National Foreign Trade Council. The outstanding luncheon of that week will be devoted to World Peace Through World Trade, and will be featured by the presentation of the American Arbitration Association's Gold Medal for distinguished service in commercial peace to Juan T. Trippe, president of Pan American Airways. This award will be made in recognition of the part airways have had in promoting peace and goodwill between the nations whose boundaries they cross.

Mr. Trippe will be the seventh outstanding contributor to the cause of commercial goodwill and peace to receive this recog-

nition, the gold medal having previously been awarded by the Association to Harry F. Guggenheim, Charles M. Schwab, Frederick Brown, Richard E. Byrd, Frank Gillmore and Thomas J. Watson.

Wisconsin Industries' Plan to Mediate Differences. The Paper Trade Journal of February 10, 1938, reports a plan of the Wisconsin Manufacturers' Association for the mediation of economic differences around a conference table rather than through the medium of legislation, under the leadership of Joseph M. Conway, president of the Association. The plan has been set up as a part of that organization's activities, and calls for a state planning committee as the first step, consisting of representatives of capital, labor, agriculture and government. As soon as the representatives are chosen, they will be asked to meet for discussion and amicable settlement of the varied problems affecting these four most important forces in the state. Representative organizations in each group will select panels of nominees from which the committee will be chosen.

Accountants and Curb Brokers Name New Arbitration Committees. American accountants, long one of the most active groups in promoting the practice of arbitration and interesting members of their profession in the principles and advantages of this method of disposing of the business controversies of their clients, have appointed the following members of the American Institute of Accountants to serve on the Special Committee on Commercial Arbitration for the current fiscal year: J. Pryse Goodwin (New York), Chairman; James F. Hughes (New York), Hobart S. Hutzell (West Virginia), Charles F. Rittenhouse (Massachusetts), Lewis Sagal (Connecticut), Clarence S. Springer (Vermont), Henry Thomson (California) and Lewis Wintermute (Ohio).

The New York Curb Exchange, like the New York Stock Exchange, maintains arbitration facilities for the use of members, and on February 16 the following Standing Committee on Arbitration was appointed for 1938-39: Benjamin H. Rosaler, Chairman; Edward J. Bowler, Horace E. Dunham, Charles M. Finn, James J. Hopkins, Frank J. McCabe, Henry Parish II, Edward J. Shean and Herbert A. Shipman.

Work of Jewish Conciliation Court Grows.[1] The annual report of the Jewish Conciliation Court of America reports not only a growth in the number of cases referred to it for disposition by individuals and by the courts, social service agencies and other groups, but also that the pattern of the New York Court is being followed in other cities. A similar court has been organized and is now functioning in Cleveland and others in Buffalo, Detroit and Boston are in process of organization.

During the past year 673 cases were filed with the Court, one matter having been referred to it by the U. S. District Court for the Southern District of New York, involving the reorganization of a Hebrew school under Section 77-B of the Federal Bankruptcy Law. During the 21 sessions of the Court held at its quarters in the Madison Street Courthouse, 264 Madison Street in New York City, 118 cases were heard and disposed of by formal decisions, 30 were determined without requiring a formal decision and about 125 were settled by the parties themselves in advance of a hearing.

35-Year Use of Arbitration Clause. The St. Helen Resort Association, which is developing 15,000 acres of lake and river property in Michigan for recreational purposes and for sale or lease to members of the Lake St. Helen Club, reports to THE JOURNAL that for the past 35 years it has incorporated an arbitration clause in the hundreds of contracts it has entered into during that time, for the erection of homes and for general development work, the total cost of which has exceeded $3,000,000.

Although an agreement to arbitrate a future dispute is not enforceable under the Michigan law, the Association states that the arbitration clause has created a spirit of goodwill among the thousands of people with whom its business has brought it into contact and that on only one occasion has it been involved in litigation.

Arbitration Meeting in Detroit. A joint meeting of the Board of Governors and the Arbitration Committee of the Detroit Board of Commerce, to which were invited members of the judiciary, representatives of bar associations and business groups, was held in Detroit on February 9, to consider, among other subjects,

[1] For a further description of the work of the court, see *Justice Among Themselves*, Vol. 1, No. 3.

methods of furthering the progress of arbitration generally in Michigan and supporting and extending the activities of the Arbitration Committee of the Board of Commerce. The desirability of revising the Michigan Arbitration Law to bring it into conformity with modern arbitration statutes was also discussed. The meeting was arranged by Henry Munroe Campbell, Detroit lawyer and a Director of the American Arbitration Association. J. Noble Braden, Executive Secretary of the Association, was the principal speaker.

Among those present were: Hon. Arthur J. Tuttle and Hon. Ernest A. O'Brien, of the United States District Court; Hon. Homer Ferguson, Hon. Ira W. Jayne, Hon. Harry B. Keidan, Hon. A. F. Marschner, Hon. Guy A. Miller, Hon. J. A. Moynihan and Hon. Arthur Webster, of the Circuit Court; Hon. Joseph A. Gillis and Hon. Ned H. Smith, of the Common Pleas Court; George E. Brand, Michigan Bar Association; Harvey Campbell, Vice-President, Detroit Board of Commerce; Clark J. W. Colby, Detroit Stock Exchange; Chester M. Culver, Employers' Association of Detroit; Allen Dean, Secretary of the Arbitration Committee, Detroit Board of Commerce; Louis J. Flint, Citizens' Committee of Detroit; B. O. Shepard and Ferris D. Stone, Detroit Bar Association; Henry L. Woolfenden, Michigan Bar Association and J. A. Wright, Flint Chamber of Commerce. Also present were: Ralph W. Barbier, Robert G. Beloud, Howard E. Blood, Henry Munroe Campbell, Arlo A. Emery, M. A. Enggass, R. P. Fohey, Carlos J. Jolly, Lee E. Joslyn, Jr., James McEvoy, Julian G. McIntosh, J. C. Mathews, James M. O'Dea, H. M. Robins, Philip J. Savage and James Vernor, Jr.

American Arbitration Association Affairs. In his monthly letters to directors and members for the past quarter, the President of the Association, Franklin E. Parker, Jr., points out, among other indications of progress, that: February reached a high peak in the submission of cases, with 76 commercial cases and 244 tort cases referred to arbitration, and that during the quarter 34 labor questions were decided by arbitration. . . . . March was the high point for income from fees, the amount of income from this source being double that for March 1937. . . . . The record for speed was broken in March, when a board of three arbitrators was assembled and the case was settled within a period of two hours, after the request reached the Association by tele-

phone. . . . . The editorial comment in the New York Times of March 29 on "Where Goodwill Pays", being a description of the work of the Industrial Tribunal, is bringing many inquiries and stimulating interest, while the article on "Streamlined Justice" in the American Magazine for February, describing the work of the Commercial Tribunal, has awakened interest throughout the country. . . . . Ten thousand copies of the Voluntary Industrial Arbitration Tribunal pamphlet were distributed by New York Bar Associations and national trade associations.

Spirit of the Day in American Business. The International Business Machines Corporation, in opening its new world headquarters on January 18, 1938, dedicated it to the cause of universal amity and adopted as its slogan: "For World Peace Through World Trade." Of this slogan the President of the United States said: "That is an excellent slogan and all mankind would be the beneficiary if the Nations of the World would adopt it as their own and put it into effect everywhere and every day." . . . . Of the New York World's Fair, its president, Grover A. Whalen, recently said: "During these turbulent times, when nations are arming for the war of tomorrow, it is noteworthy that we of the World's Fair, who are searching for a new and better world of tomorrow, shall provide the ammunition for peace, for we are providing a great congress of nations dedicated to peace and international understanding and we look forward to its being the peace table of the world." . . . . Launching a state-wide campaign for the use of arbitration, the president of the Real Estate Association of the State of New York described arbitration as the "Spirit of the Day in Business".

COMMERCIAL ARBITRATION AWARDS

Co-partnery is called by civilians "the mother of discord"; and so (without any intention of depreciating its usefulness) it is frequently found to be. The persons who enter into it, notwithstanding every friendly feeling they may have towards each other at the time, appear to foresee that differences of opinion *may* arise between them; for the amicable arrangement of which, when they shall arrive, they naturally wish to provide a prompt and efficacious remedy, in the agreement containing the regulations to be observed by them in their newly-formed connexion; instead of being obliged

to have recourse to the only alternative—a probably long-protracted, and a certainly expensive suit in chancery.—*Stevens on Arbitration* (1835).

Division of Partnership Assets. Two friends entered into a business venture whereby they became joint owners of two barber shops and each the manager of one, the agreement providing that the profits of both shops were to be pooled and divided equally between the parties. The venture was successful financially, but soon after the contract was entered into, it became evident that one shop was decidedly more successful than the other. Both parties agreed that this was partly due to the fact that the more successful shop was in a better location, but the manager of the shop in question contended that its greater success was also largely due to his better management of the business. Under these circumstances, the manager of the more profitable shop was no longer satisfied with the arrangement for equal division of the combined profits and by the end of two years dissension and bad feeling between the partners reached the point where they were unwilling to continue the partnership and decided that each should become sole owner of one of the two shops. Their differences resulted in a serious controversy as to which of the partners was to receive the better shop and as to the relative values of the two properties. When they were unable to agree, the arbitration clause in the partnership agreement was invoked and three arbitrators were chosen to determine these questions.

After hearing the testimony of the two partners, the arbitrators adjourned the hearing at the suggestion of the parties, for the purpose of giving them an opportunity to agree upon terms of a settlement between themselves and the arbitrators consulted with each party and his attorney separately concerning an adjustment of the controversy. When these negotiations proved unsuccessful, however, the hearing was resumed.

After taking all testimony which the parties desired to offer, the arbitrators requested the accountants for both sides to submit an agreed statement and a balance sheet for the two shops involved. After these had been filed and examined, the arbitrators made an award under the terms of which each partner became the sole owner of the shop of which he had been the proprietor and the owner of the more financially successful shop was directed to pay to the other partner the sum of $2,900. (Docket 2089.)

Partnership Dispute between Brother and Sister. Brother and sister entered into a partnership agreement under which the former sold to his sister a one-third interest in a dry cleaning business and at the same time the sister was given employment in the corporation at a fixed salary. From the contract entered into by them, it was apparent that neither entirely trusted the other, since their lengthy agreement attempted to provide against many possible contingencies and included a long and involved arbitration clause. After less than one year of dissatisfaction with results, the sister decided to withdraw from the corporation under the provisions of the contract which covered this contingency. Unable to agree upon the value of the sister's stock and upon the time and method of payment to be made therefor by the brother, the parties appointed two arbitrators who attempted to negotiate the terms of a settlement. The arbitrators so chosen likewise failed to reach an agreement and requested the American Arbitration Tribunal to designate the third impartial arbitrator and the controversy was submitted to arbitration under the Rules of the Tribunal.

During the course of the hearing, the sister's representative attempted to prove the business virtually bankrupt, while the brother's contention as to the value of the stock as collateral was exactly the opposite. It became necessary under the circumstances and in view of the conflicting demands of the parties, particularly relating to future performance and the anticipated default by the brother, to draw a new superseding agreement between the parties in the form of an award and, in so doing, to render an award which under the law would be definite, final and conclusive and within the terms of the submission.

The arbitrators' award named the amount due the sister for her one-third interest in the business, provided a method of payment in weekly instalments, directed the deposit of the brother's stock in escrow as security, provided for the management of the business by escrow agent in event of brother's default and for satisfaction of the sister's claim in the event that at the end of six months the terms of the award had not been complied with. (Docket 2266.)

Death of Partner and Effect upon Heirs and Survivor. A joint venture that had continued on friendly terms for 24 years was ended by the death of one of the two partners. The two men had been joint owners of two pieces of real estate, each partner collecting rents from one of the properties, subtracting $200 from the amount he collected each month and depositing the balance in a joint account which had been established in the name of a corporation formed as a repository for funds from the venture and for the maintenance of the properties. Each partner kept his own records and the bank account was maintained with such flexibility that either partner could apparently borrow from the account or lend money to it on his own initiative.

After the death of the partner the informality of the arrangement presented serious difficulties in determining the respective rights of the surviving partner and the children of the deceased partner, the latter disputing a claim of the surviving partner that the estate owed him the sum of $2,934. Unable to reach an agreement, the parties to the controversy entered into a submission agreement referring the matter to the American Arbitration Tribunal. Three arbitrators who could read documents written in Yiddish, one of whom was a certified public accountant, were chosen by the parties. An interesting illustration of the type of question presented to the arbitrators was a disputed translation of the Yiddish used by the deceased partner in one of his records, his heirs claiming that a certain item was marked "owing to me, $1,073.98", while the surviving partner contended that the correct translation of the words was "excess deposits" and that this excess deposit was made for the purpose of paying back to the account money which the deceased partner owed it.

The case was further complicated by the fact that the personal relationship of the partners was such that no surviving records gave a true picture of their various undertakings. From the testimony offered and the available records submitted, however, the arbitrators were able to dispose of the various items in dispute and to make a final award satisfying the claims of each party against the other. (Docket 2040.)

AMERICAN INDUSTRIAL ARBITRATION*

ARBITRATION IN THE BUILDING TRADES OF GREATER NEW YORK

BY

THOMAS A. MURRAY †

ARBITRATION has been included in building trade agreements in Greater New York since 1903, when a joint arbitration plan was formulated between the Unions of the Building Trades and the Building Trades Employers' Association. Under the plan, which was amended in 1905, there are provisions against strikes and lockouts in the working agreements, and a set-up which provides for a General Arbitration Board affiliated with the Employers' Association and recognized as such by the Building Trades Council.

There are regular meetings of the Arbitration Board which, at the request of the Unions, consists of employers only. But we favor attempts to settle disputes by mediation before they reach the stage that requires arbitration, and for that reason, and for expediency between the regular meetings of the Arbitration Board, we have set up a Mediation Board which is available immediately when any dispute arises. The personnel of the Mediation Board at the present time consists of Mr. C. G. Norman, Chairman of

* Court decisions relating to industrial arbitration will be found in the section on Arbitration Law, beginning on p. 193; references to industrial arbitration in foreign countries will be found in the section on International and Foreign Arbitration, p. 176.

† President, Building and Construction Trades Council of Greater New York, Long Island and Vicinity.

the Board of Governors of the Building Trades Employers' Association, and myself as Chairman of the Building Trades Council. This Board meets in an endeavor to mediate any dispute which arises and only upon its failure to bring about an agreement is a case turned over to the Arbitration Board for settlement.

The Mediation Board has settled many potential arbitration cases before they reached serious proportions. Further attempts at conciliation of disputes are made by the executive committee of the Arbitration Board, which is empowered to act under the agreement as a Conciliation Board, with all the powers invested in the Arbitration Board itself, in the periods between the latter's regular meetings. Regular meetings of the Conciliation Board are held weekly but, under the agreement, may be called at any time by the Secretary of the Board. This plan permits speedy settlement of disputes when the element of time is important, as is often the case.

The principal application of arbitration in the building trades in the 35 years in which the plan has been in operation in the New York building trades has been in the settlement of jurisdictional disputes between unions. The arbitration method of settling such disputes has proved to be the most effective way of handling them. The question of jurisdiction over classes of work by the various unions is extremely complicated and no one unfamiliar with the work and the materials used in it could make a satisfactory decision. Arbitration, however, makes it possible to have such matters adjudged by men familiar with the work and the problems involved, whose decisions will be respected because of that knowledge. Furthermore, the existence of a competent Arbitration Board is, in itself, a deterrent to disputes and encourages the early settlement, by the processes of mediation and conciliation, of many which do arise.

In addition to the General Arbitration Board there are separate arbitration boards in the individual unions, which function in settling disputes arising out of working agreements between employers and the unions involved. Such disputes are usually settled quickly by arbitration before a mutually agreeable, impartial arbitrator.

Another feature of arbitration which has won favor in the building trades is the fact that disputes are settled privately and on the basis of self-government. In this connection the plan under

which union jurisdictional disputes are settled differs somewhat from ordinary arbitration practice. Under our rules a party to a dispute has the privilege of appealing a decision of the Arbitration Board to a National Referee whose decisions, in cases brought to him, are final and binding upon both parties. Dr. John Lapp, of the American Federation of Labor, Washington, D. C., is the referee recognized by our Council and other parties to the general agreement under which our arbitration system operates. In the only case in my experience where an arbitration decision was appealed to the regular courts the arbitration decision was upheld. This case, involving the sum of $28,000, arose in connection with the construction of a State Hospital on Long Island, and was arbitrated under the compulsory arbitration clause contained in all working contracts of the Bricklayers, Masons, and Plasterers International Union.

Member Unions of this Council, on the whole, favor arbitration. Any hesitancy I have encountered in adopting the arbitration method of settling disputes has been due largely to the fear that friendship for either party to a dispute on the part of arbitrators might take precedence over facts in cases submitted to them. Every endeavor should be made, in my opinion, to create confidence in the personnel of arbitration boards as a method to overcome any fears of bias. This can best be done by selecting, as arbitrators, men who have the full confidence of the groups which they represent, and by maintaining at all times on such arbitration boards an equal and proper representation of labor and employers or men who are mutually agreeable to both of these groups.

Furthermore, it is highly important that all hearings be conducted in such a manner that the dignity of the proceedings is maintained and that awards be made in such a way that they will be legally enforceable in the event any question arises as to their legality.

It is my personal opinion that arbitration has done much to improve conditions in the building trades and that its continued use and expansion will go far towards maintaining industrial peace.

THE OPEN DOOR TO ARBITRATION

BY

J. NOBLE BRADEN *

THE telephone in the office of the registrar of the Voluntary Industrial Arbitration Tribunal of the American Arbitration Association rang one Wednesday afternoon in February and an excited union representative at the other end of the line unloosed a flood of questions at the Tribunal official, which all headed up to one important point: Could a hearing be arranged by the following Saturday morning in a dispute between the union and an employer over the allegedly unfair discharge of two employees?

"If not, it's just too bad", said the union representative with convincing finality, "for either those men go back to work on Monday morning or a strike will be called."

As there had already been one strike against the company, only recently settled by an agreement, neither the union nor the company, it appeared, wanted to risk another, yet each refused to yield to the demands of the other. The possibility that the arbitrator might refuse to order the reinstatement of the employees was another matter entirely, apparently, to the union. "If we get an impartial man whose fairness we can trust and he says we're wrong, we'll accept his decision", was the answer to that suggestion.

Questioning by the registrar of the Tribunal revealed that the two union members had been dismissed by the company on charges of inefficiency and disloyalty. The union took exception to the employer's right to discharge these men, on the ground that the chief reason for their dismissal was their union activity, and demanded their immediate reinstatement. The labor agreement between the company and the union contained no provision for the arbitration of disputes, such as this one, in the event that grievance machinery failed to work or reached a dead-lock. However, both the union and the employer were willing to submit their controversy over the justification for the discharge of the two men to arbitration under the Tribunal's rules.

Accordingly, an appointment was made for the employer and the representative of the union to come to the offices of the Tribunal the following day. There they signed the necessary

* Secretary, Arbitration Committee, American Arbitration Association.

submission agreement and selected an impartial arbitrator from the Tribunal's panel. A hearing was scheduled for Friday morning, at which the employer, his foreman, the counsel for the union and the two employees appeared and testified. By one o'clock on Friday the arbitrator had made his award, directing the reinstatement of the two employees, for whose dismissal he had failed to find proper justification, and the men reported for work Monday morning.

The case just described is one of 40 matters handled by the Voluntary Industrial Arbitration Tribunal since its organization in October of last year, every one a dispute or difference between management and workers arising out of an agreement between company and union.

These labor agreements, in some instances, marked the ending of a strike; in others, they resulted from the voluntary efforts of employer and workers to arrive at mutually satisfactory conditions of employment; still others followed elections determining the bargaining agency for the workers. Most of the agreements included some form of provision for the arbitration of controversies between management and labor, failing the ability of the two to arrive at a satisfactory adjustment of their difficulties by other means.

In many cases prompt action was necessary to forestall trouble and in some instances, as in the case referred to, only the ability of the Tribunal to function immediately and enable the parties to secure a prompt decision prevented strikes and other disturbances.

Each of these 40 cases was decided on its merits on the basis of evidence submitted to an arbitrator mutually agreed upon, and in every case the arbitrator's decision has been complied with without the necessity of proceeding before the courts in order to enforce the award. A check of the questions submitted to the arbitrators for determination reveals a wide variety of the problems that arise when men work together. The following, for example, are some of them:

> When machine production replaces hand production in the manufacture of shoes, how shall wages be readjusted?
>
> Under an agreement granting employees one week's vacation with pay, are those employees who are laid off before the arrival of the vacation period entitled to a week's pay?
>
> Under what conditions does the "necessity" for the reduction of overhead expenses justify the discharge of an employee?

Was a union justified in demanding the discharge of an assistant foreman whose complaint had resulted in a worker's dismissal, and did such dismissal constitute a breach of the agreement by the company?

Under a labor agreement requiring that all employees who are members of the union must remain in good standing, must the employer, under the terms of the contract, discharge five men when they refuse or neglect to pay their dues?

Under what circumstances may an employer remove his factory to another city contrary to the provisions of his contract with the union establishing the basis upon which such removal may take place?

In dismissing an employee to reduce over-head, may seniority be waived in favor of a nephew of the employer?

Inquiries are constantly being received by the Tribunal as to how cases can be brought before it and concerning the extent of its powers. How does a *Voluntary* Tribunal work? Whence does it derive its authority? How can its functioning be assured when a dispute arises? Can any group appear before it or is it only for members? How soon can a hearing be had? As it is a non-official body, how may its awards be enforced? These are typical questions being asked.

By a Voluntary Tribunal it is meant that *both* parties to a dispute come before it willingly and only upon their mutual agreement to submit to its findings and comply with the arbitrators' awards. The Tribunal has no members, as such, and is open to any parties in dispute. Like the commercial tribunal, it derives its authority from arbitration laws, which likewise provide enforcement of the awards of its arbitrators. Disputes come before the Tribunal in three ways:

Through arbitration clauses in agreements which specifically provide that, in the event of disputes, they shall be referred to arbitration under the Tribunal's rules;

Through arbitration clauses in agreements which provide for arbitration but which make no provision for rules of procedure in the event of a deadlock of the parties, in which event they may, by signed stipulation, adopt the rules of the Tribunal and proceed thereunder;

Through the signing of a submission agreement *after* the dispute has arisen, where there is no arbitration clause in the labor agreement, whereby the parties agree to refer a specific dispute to the Tribunal.

In the first instance, a demand for arbitration by either party, sent to the other party, will put the Tribunal Rules into effect; in the second, the Tribunal Rules are applicable only upon the

willingness of both parties to adopt them; while in the third instance, mutual understanding and cooperation of the parties are necessary to bring about an arbitration after the dispute has arisen.

The average charge to the parties for an arbitration proceeding has been $20.00 per hearing, the company and the union each bearing half of the cost, and in the great majority of cases one hearing was sufficient. In one case, however, a prominent member of the bar sat as arbitrator for more than three days, heard 49 witnesses and had 58 separate alleged violations of a labor contract submitted to him for determination. Several days were devoted by the arbitrator to considering the evidence and writing his opinion and award. Like the other members of the Tribunal's panel of arbitrators, this busy man believes the opportunity for service offered by the Voluntary Industrial Arbitration Tribunal justifies him in giving his time and effort, without compensation, to the cause of industrial peace.

CONCILIATION BY U. S. DEPARTMENT OF LABOR *

A CASE STUDY

THE 25th anniversary of the establishment of the Department of Labor, provided for in an Act of March 4, 1913, finds the Conciliation Service performing services which are in the front rank among functions assigned to the Department.

The enabling act provided for the Service in these words:

> "The Secretary of Labor shall have power to act as mediator and to appoint commissioners of conciliation in labor disputes whenever in his judgment the interests of industrial peace require it to be done."

This work has grown until at the present time there are 53 commissioners of conciliation attached to the Service.

FUNCTION OF SERVICE

Regarding the work of these commissioners, John R. Steelman, Director of the Service, stated recently:

> "Only men highly skilled in negotiations and equipped with specialized knowledge can be safely entrusted by a government agency with the performance of such services. Work of this character generally attracts

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little public attention. It does not appear in the statistics of strikes. Yet it has a public value in the field of industrial relations very much like that of public health agencies in the field of preventive medicine and public hygiene."

In order to illustrate the manner in which the Service works, a generalized example is here presented based on records of actual experience. The situation described is not that existing in any one case but is typical of many controversies and the procedure followed by conciliators.

The XYZ Baking Company employs 50 truck drivers to deliver its products throughout the city. As the result of an organizing campaign a number of the drivers have joined a labor union which, in their behalf, demands recognition and an increase of 10 cents an hour in wages. The company refuses such recognition. The union counters by calling its members out on strike, with recognition as the price of resumption of work. Presently a full-fledged labor dispute has arisen.

At this point the personnel director of the company telegraphs the Conciliation Service in Washington requesting that a conciliator be assigned to the case. In due course the Director of the Service dispatches Commissioner Jones, who immediately proceeds to the offices of the Baking Company.

The commissioner calls on the management first, because the request for conciliation came from the company and not from the union. He seeks to obtain the company's side of the controversy and to convince the management of his complete impartiality in the case. Following his conference he goes to the union headquarters, where he receives the employees' version of the causes of the dispute and the demands they are making on the company.

After he has familiarized himself with the conflicting views in the controversy, the commissioner arranges a joint conference between representatives of the management and the union. This is their first meeting since the strike began and the commissioner himself assumes the rôle of chairman. After prolonged negotiations it is found that no progress has been made, since both sides refuse to compromise their demands. This meeting is therefore adjourned by the commissioner.

COMPROMISE SUGGESTED

The next step which Mr. Jones takes is to negotiate with each side separately. He proposes to the management that it recog-

nize the union as bargaining agent for its own members alone and that it offer a wage increase of 5 cents an hour instead of the 10-cent increase which the union demands. He makes a like suggestion to the union, saying that the company might accept a compromise if the union will modify its demands.

Before he calls another joint conference, the commissioner has obtained verbal assurances from both sides that they will agree to his suggestions. The company, when it learns that the union has informed the conciliator that it is willing to compromise, agrees with Mr. Jones that an equitable solution of the controversy would be recognition of the union as agent for its own members and a 5-cent wage increase.

A final settlement is made at the second joint conference. The commissioner has drawn up a written agreement stating the terms on which the strike is to be terminated. It provides that: (1) The company recognizes the union as the bargaining agent for all its employees who are members of the union; (2) Beginning on the first of the month, all wages will be increased 5 cents an hour; (3) All those employees who participated in the strike will be rehired without prejudice to their rights or positions; (4) The union will refrain from coercing non-union employees from joining the union; (5) Any dispute arising from interpretation of the terms of the settlement will be referred to an impartial referee, to be chosen by the Secretary of Labor, before resorting to a strike or lock-out.

THE SETTLEMENT

The settlement is signed by a representative of the company and the union and is witnessed by the commissioner. From then on it becomes the basis for the labor relations between the company and its employees.

The example of the dispute in the XYZ Baking Co. case omits certain events which may occur in the settlement of many labor disputes by the Conciliation Service. In the first place, the request for mediation does not always come from the company or the union concerned. In many instances, some public official asks the Service to send a conciliator to aid in settling a dispute. A recent example of this was in the maritime strike among the longshoremen in Puerto Rico. Commissioner Bernard was dispatched at the request of the Department of the Interior, which administers the affairs of the island.

In disputes where the company concerned is controlled in some other city, the conciliator, after reaching a tentative agreement on the spot, must consult by telephone or otherwise with the controlling officials. Contact may similarly have to be made with officers of the national union with which the local union is affiliated.

In recent months there has been an increasing tendency on the part of both sides to disputes to call in the Conciliation Service before there is a cessation of operations. Mr. Steelman said last week that, in almost half the cases handled, he had been called upon to send in a conciliator before negotiations broke off. It has become the policy of the international officers of a number of labor unions, he said, to consult a commissioner of conciliation before sanctioning a strike.

NOTES AND COMMENT

Dress Industry's Peace Machinery Succeeds. During a period in which American industry as a whole was experiencing its costliest and most disruptive strikes, New York City's largest business, the $500,000,000 dress industry employing 100,000 workers, succeeded in maintaining peace and stability in the trade through its collective labor agreements.

In a report issued on January 24 by Harry Uviller, impartial chairman and administrator of the industry, covering the twenty-one and a half months ending on December 31, it was revealed that 3,728 complaints of violations of the collective agreements were filed in the impartial chairman's office, many of which, if they had not been adjusted promptly, would have resulted in strikes or other disturbances. All of these complaints were disposed of without interruption of work and on terms acceptable to both sides.

The collective labor agreements are between the International Ladies Garment Workers Union and four employer organizations: National Dress Manufacturers Association, Affiliated Dress Manufacturers, Popular Priced Dress Manufacturers Group and the United Dress Manufacturers. The agreements set up an administrative board composed of representatives of the five organizations, with Mr. Uviller as chairman, and provide for the filing of all complaints with the impartial chairman when the parties to a dispute fail to adjust it themselves.

The operation of all phases of the industry's impartial machinery costs about $10,000 a month. Mr. Uviller pointed out that the efficiency of the machinery is the result of 27 years of trial and testing, the basis having been laid in agreements in the women's clothing industry in 1910, regarded as the beginning of the modern form of collective bargaining.

New York Hotels Sign Arbitration Agreement. An arbitration agreement which promises industrial peace in the New York hotel industry was signed on March 23 in the offices of the State Labor Relations Board by the Hotel Association of New York City and a group of A. F. of L. unions affiliated with the Hotel Employees Organization Committee. The agreement, which affects 60,000 workers in 160 major hotels, establishes machinery for arbitration of all grievances between employers and employees and calls for the appointment of a labor manager by the Hotel Association and one representing the unions, to be followed by the immediate appointment of an impartial arbitrator, to whom differences not adjusted by direct consultation will be submitted for adjudication.

Arbitration Provisions in Recent Labor Contracts. Department store workers, glass workers, telegraphers, employees of big steel and utility corporations, millinery workers, and even embalmers, are among the employee groups that have recently entered into agreements with employers into which provisions for arbitration and machinery to deal with grievances have been incorporated for the protection of both management and workers. A number of the agreements specifically provide that there shall be no strike nor lock-out pending the functioning of the arbitration machinery.

Gimbel Brothers, Inc., and Hearn's, two of the largest department stores in New York City, have signed one-year and three-year contracts, respectively, with the unions representing their employees, both agreements containing a provision for a grievance committee for the adjustment of differences and disputes.

The General Electric Company's contract with the United Electrical, Radio and Machine Workers' Union affects six plants and 27,000 workers and contains a provision for arbitration preceding any strike or lock-out.

The agreement between the Tennessee Electric Power Company and the same Union includes a similar provision for arbitration. Under Article V of the agreement, disagreements and disputes which cannot be settled between the Union and the Company may be referred by either party to a board of three arbitrators, one chosen by each side and the two so chosen to select the third, all of whom shall be residents of the territory served by the Company. Majority awards of the arbitrators are final and binding and both the Company and the Union bind themselves not to engage in strikes or lock-outs as long as the other side observes the contract and complies with arbitrators' awards.

Wage agreements covering 20,000 flat glass workers employed by the Pittsburgh Plate Glass Company, the Libbey-Owens-Ford Company, American Window Glass Company and other leaders in the industry include more effective machinery for adjusting grievances than was the case in former agreements.

The year-old contract between the United States Steel Corporation and the Steel Workers' Organizing Committee was extended in February, retaining the provision for the adjustment of grievances, by a series of steps beginning with efforts of the employee and the foreman to adjust the difference; if no mutually satisfactory adjustment is arrived at, the dispute is finally submitted to an impartial arbitrator.

Two years of peace in the millinery industry seem assured by the signing of an agreement between the manufacturers, represented by the Eastern Women's Headwear Association, and the United Hatters, Cap and Millinery Workers' Union and its affiliates. The agreement affects 800 employers and 20,000 workers and continues in effect two years, during which time an impartial chairman and boards of arbitrators will deal with violations of the contract and disputes as to piece rates, etc.

Provision for a grievance committee and the arbitration of disputes was included in the two-year agreement signed by the Associated Press and the Commercial Telegraphers' Union of America, which runs until May 31, 1939; and a clause providing for payment by the Company to workers for time spent in serving on the grievance committee in settling disputes was contained in the contract signed by the American Sugar Refining Workers' Union.

In New York, the Licensed Embalmer's Federal Labor Union signed its first contract with an undertaking establishment, running for two years, during which time it is provided that there shall be no cessation of work or strikes and that all differences and disputes shall be submitted to arbitration.

Arbitration Agreement Ends Porto Rico Shipping Blockade. On February 10 a six weeks' strike of stevedores against shipping companies in Porto Rico, which Governor Winship declared had created a blockade more firm and more effective than those established during the war, was settled by agreement of the strikers and the ship owners to accept a plan for arbitrating the disputed question of wages.

The striking stevedores returned to work at an hourly base rate of 40 cents as compared with 32 cents when the strike was called, the final wage scale to be determined by a board of arbitration, which has been named by Governor Winship and will consist of Chief Justice Emilio del Toro, Associate Justice Travieso and Insular Auditor Leslie A. MacLeod. The termination of the strike was expedited by the cooperation of the A. F. of L. and the C. I. O. and was hailed by Island officials as demonstrating Porto Rico's ability to handle its difficulties in a sane and sensible American way.

Although Governor Winship, on January 25, had delivered an ultimatum to striking stevedores and ship owners to terminate the strike promptly or have the Government step in to end the complete tie-up of shipping, the strike was marked by orderliness throughout.

Employer Sues Union After Its Failure to Arbitrate. For the second time in recent months [1] an employer has filed suit in the New York Supreme Court against a union for damages arising out of the calling of a strike and alleged failure to arbitrate a difference in accordance with the terms of an agreement between them.

As in the previously reported case, the Union concerned is Local 807, International Brotherhood of Teamsters and Chauffeurs. The suit was filed by the L. & L. Transportation Company and asks $25,000 for damages claimed to have been suffered,

[1] See the Arbitration Journal, Vol. 2, No. 1 (p. 37) for previous case.

including the spoiling of three loads of perishable freight which were tied up by a strike called by the Union when a driver who had been involved in three accidents in eight days was discharged by the Company. The suit asks that the Union be ordered to arbitrate existing differences in accordance with a provision in the contract that no strike shall be called until the dispute underlying it has been submitted to arbitration.

Survey of Grievance Procedure. In 1937 the National Industrial Conference Board, Inc., through the cooperation of 143 companies that provided it with copies of their union contracts, made an analysis of the prevailing provisions in these agreements for the adjustment of grievances and for arbitrations[1] and found that a standard procedure for the settlement of grievances was included in 101 of the 85 C. I. O. and 58 A. F. of L. agreements examined.

A marked similarity was evident in the adjustment machinery established in C. I. O. contracts, indicating that a standard procedure has been developed at the Committee headquarters and submitted to employers in connection with proposed contracts. In more than 60 of the C. I. O. agreements examined, the machinery for adjusting grievances was as follows:

> First, between the aggrieved employee, who is a member of the union, and the foreman of the department involved;
>
> Second, between a member or members of the committee, designated by the union, and the foreman and superintendent of the department;
>
> Third, between a member or members of the committee, designated by the Union, and the manager or general superintendent of the plant;
>
> Fourth, between the representatives of the national organization of the union and the representatives of the executives of the corporation;
>
> Fifth, in the event the dispute shall not have been satisfactorily settled, the matter shall then be appealed to an impartial umpire to be appointed by mutual agreement of the parties hereto. The decision of the umpire shall be final. The expense and salary incident to the services of the umpire shall be paid jointly by the corporation and the union.

Special provisions for dealing with cases of alleged unfair discharge were found in 75 agreements, and stated periods for the presentation of grievances were provided for under 65 agreements, although 57 of the agreements permit complaints of unfair discharge to be submitted at any time.

[1] For a detailed analysis of the survey, see Conference Board Service Letter, Vol. X, No. 10.

Two of the C. I. O. agreements provide for the adjustment of grievances which the management may have against the union or its members.

Arbitration Clauses in Labor Agreements. From time to time THE ARBITRATION JOURNAL will present the texts of arbitration clauses in effect in existing labor agreements which utilize the services of the Voluntary Industrial Arbitration Tribunal. In accordance with this policy the following arbitration provisions in labor contracts filed with the American Arbitration Association are presented:

"If any controversy arising under this agreement cannot be adjusted by the parties, a board of arbitration shall be appointed in the following manner: an equal number of members shall be selected by the Company and by the Union in such number as they agree upon; and if they cannot agree upon the additional or odd member, the American Arbitration Association is authorized, upon the application of either party, to appoint such additional member in the manner prescribed in its Rules of Procedure; and the decision of a majority shall be *final* and *binding* upon the parties."

"If any controversy or question arises which threatens the friendly relations existing between the parties to this contract, and for which no provision for arbitration has been made, either party may apply to the American Arbitration Association for such services as will tend to avert the violation of the contract or to promote its amicable observance or facilitate the peaceful changes to be effected thereunder."

"Wherever arbitration is provided for in this agreement and the arbitrators respectively appointed by the Union and the Employer cannot agree on the selection of an impartial arbitrator, within three days from their appointment, either party to this agreement may apply to the American Arbitration Association, to designate an impartial arbitrator. Upon the designation of such impartial arbitrator, the matter in dispute shall be submitted to him for decision; and the parties hereby agree that his decision shall be binding on both parties to this agreement."

"In the event of any dispute or controversy between the Company and the Guild arising under this agreement, or as to the validity thereof, or as to the interpretation thereof, or as to a claim of breach thereof, or a breach thereof, either party may demand arbitration as follows:

"The party desiring arbitration shall notify the other party in writing of its intention to arbitrate and shall, in such notice, designate by name and address one arbitrator. Thereafter and within one week from the receipt of such notification, the recipient thereof shall inform the other party in writing of the name and address of its arbitrator.

"The two arbitrators so chosen shall designate a third arbitrator to act with them. In the event that within one week after the appointment of the second arbitrator, the two arbitrators shall not have agreed upon the third arbitrator, such third arbitrator shall then at the request of either of the two arbitrators, be appointed by the Arbitration Committee of the American Arbitration Association. Such third arbitrator shall not, however, be affiliated with, connected with, employed by or financially interested in, any labor, employer or trade association, or any phase of the industry, nor shall he have had such employment, connection, affiliation or interest in the past.

"It is mutually agreed by and between the parties here that the decision of any Board of Arbitration chosen as hereinabove provided, shall be final and binding upon the parties hereto, and the parties agree to abide by such decision. The expense of the third arbitrator shall be borne equally by the two parties. Such arbitration shall be conducted in accordance with the rules and regulations then prevailing of the American Arbitration Association."

"If any controversy or grievance arising under the terms of this agreement is not amicably adjusted and settled in the manner hereinbefore provided, same may be submitted to a board of arbitration, under conditions to be mutually agreed upon at the time, selected as follows:

"Three (3) to be chosen by the Company and three (3) to be chosen by the Union. These six members shall meet within forty-eight (48) hours after receipt of written notification from either party (Saturdays, Sundays and holidays excluded) and at that meeting shall select a seventh member. If they cannot agree on the seventh member, he shall be designated by the American Arbitration Association. The decision of the Board shall be rendered within seventy-two (72) hours unless by agreement time is extended by seventy-two (72) hour periods. The decision of a majority of said Board shall be final and binding on both the Company and the Union in such controversy or grievance and shall conclusively determine the same. The Company and the Union shall bear the expenses of their respective appointees but shall share equally the expenses of the seventh member.

"Under no circumstances shall there be a cessation of work, strike of any nature, or lock-out while arbitration or adjustment of the dispute is in process of being settled as herein agreed upon."

American Arbitration Association Announces Labor Program. A Five-Point Program of the American Arbitration Association for the Peaceful Settlement of Labor Disputes was announced by Franklin E. Parker, Jr., in assuming the presidency of the Association at a meeting of directors and members on January 27, 1938. Briefly summarized, the program is as follows:

1. Facilitating the making of labor contracts in which there are adequate provisions for the arbitration of differences;

2. Promoting a wider use of the Voluntary Industrial Arbitration Tribunal, which is now in operation under the supervision of an Administrative Council representing industry, labor and the public, and to which, since its establishment in October more than 40 matters have been submitted for arbitration by unions affiliated with the A. F. of L. and the C. I. O.

3. Establishment of a commission on peaceful change in labor relations, to study machinery and methods of settlement and ways and means of bringing industry and labor together before their differences reach a bitterly controversial stage, thus developing a service which will precede arbitration and in many cases make it unnecessary;

4. Maintenance of a bureau for the distribution and exchange of information, not for propaganda, but to provide a service for those concerned with industrial relations;

5. Expansion of the section of The Arbitration Journal devoted to industrial arbitration; organization of discussions in connection with important industrial relations subjects; bestowing of awards for distinguished service in the cause of industrial peace and for plans submitted for increasing the effectiveness of arbitration in settling the differences of capital and labor.

"We believe", said Mr. Parker, "that this program will help construct a new basis for an early industrial society in which both labor and industry will observe their obligations scrupulously."

Activities of the New York State Board of Mediation. A report of the first six months' activities of the New York State Board of Mediation reveals that 152 cases were accepted for mediation between July 1 and December 31, only 18 of which remained unadjusted at the end of the year. The report discloses that satisfactory adjustments were arranged in 58 cases, 20 were in process of adjustment, settlements were pending in 24, 19 were settled before mediation and no action was taken on 13.

The report states that the board itself does not wait until its services are requested by either party to a labor dispute, but of its own initiative, whenever it ascertains that such a controversy exists and is likely to culminate in a strike, stoppage or lockout, immediately invites both parties to meet with a member of the board to discuss the matters in issue and make an attempt to arrive at the basis of an agreement.

During the period covered by the report 38 cases were accepted for arbitration by the board or by its special panel of citizens, 60 cases were referred to other governmental agencies and 107 were rejected for lack of jurisdiction.

Since the first of the year, the Mediation Board has been successful in terminating a number of strikes, including that of the employees of the Horn & Hardart chain of automats which had continued for five months, the seven-weeks' strike of employees of 57 stores of the Whelan Drug Company, the strike of members of the Theatrical Managers, Agents and Treasurers Union against nine New York theatres, and had intervened to avert a threatened strike of 1,500 members of the Photo-engravers Union and to end the strike and lockout in the fur industry.

San Francisco Seeks Labor Peace. San Francisco business men, beset by a number of costly strikes, have set up a committee, known as the Committee of 43, which is active in carrying on negotiations with councils composed of both A. F. of L. and C. I. O. groups, in an effort to establish machinery for the settlement of labor disputes by friendly and voluntary negotiation after the parties have failed to reach an agreement but before the differences reach the strike stage. The Committee's plan for the settlement of controversies contemplates the establishment of a board of appeal, representing employers and labor, which would seek a basis for negotiations after the failure of employer-union efforts. The board would function as an advisory body and none of its suggestions would bind either party. Success of the Committee's efforts to set up this peace machinery will depend upon the approval of labor leaders and their cooperation in putting the plan into effect.

Mediation by the Clergy. Clerical Mediation in American Labor Disputes, 1900-1937, is the title of a forthcoming survey to be issued under the editorship of the Rev. Paul Stroh, C. SS. R. Its purpose is to gather and present the facts that pertain to the activities of the Catholic clergy in industrial conflict and their efforts to obtain industrial justice for the worker in the United States, from 1900 to the present. So far, the records gathered cover the activities of approximately one hundred Catholic clergymen who have acted as mediators or arbitrators in industrial disputes.

INDUSTRIAL ARBITRATION AWARDS

Under an agreement granting employees one week's vacation with pay, are those employees who qualify for the vacation but who are laid off before the arrival of the vacation period entitled to a week's pay?

The contract provided that each employee, upon completion of one full year's employment with the company, would be granted one week's vacation with pay. For the year in question, 1937, the vacation period was to be fixed at the discretion of the firm between the date of the contract and December 31. The Company fixed the last week in December, and the conditions of the contract were met except in the cases of a group of employees who were laid off in October and November because of the state of business.

However, most of these employees were later recalled and received an extra week's pay with their first pay envelope, narrowing the controversy to 18 employees who were not recalled and who claimed they were entitled to one week's pay in lieu of vacation. This the company refused to grant, on the ground that the paid vacation was granted employees as a substitute for a bonus formerly given workers in December, thus establishing December employment as a test.

It was the arbitrator's decision, however, that a vacation represents a right, whereas a bonus is a gift, and that had the vacation week occurred prior to October, those in question would clearly have participated, and that it was unreasonable to make a distinction in the 1937 vacation rights according to whether or not the worker was recalled in 1938. The 18 workers were awarded a week's pay, with the understanding that their eligibility (one year's employment) would be measured to the week of the lay-off and not to the vacation week. (Docket 2335.)

When an agreement in a labor contract provides that employees shall not be discharged without just cause and only after a review of their case by Employer and Union, and two men are discharged when Employer and Union disagree, what is the intent of such agreement and was the dismissal in violation of its provisions?

The labor agreement entered into between the union and the employer permitted the latter to maintain an open shop, required the consent of the union to the discharge of union employees and provided for the arbitration of controversies as to the justification for such discharge.

The employer, a converter of piece goods selling his product to manufacturers of ladies' dresses, discharged two union employees who had been employed for seven weeks and six years, respectively. The alleged basis for the junior employee's discharge was carelessness and inefficiency, the employer introducing evidence of three errors made in the shipment of goods. In the case of the senior employee, the employer alleged gross indifference, incompetency and a generally disloyal attitude. On its part, the union claimed the reason for the discharges was the employees' union activity.

The board of arbitrators consisted of three members, one each appointed by the employer and the union and the third selected from the panel of the Voluntary Industrial Arbitration Tribunal, and the majority decision of the board was that the men had not been justifiably discharged and should be reinstated. In the case of the junior employee, the basis of their award was that the employer had had a probationary period of three weeks in which to discharge the employee for inefficiency, and further, that two of the errors complained of had not come to the employer's attention until after the discharge. In the case of the senior employee, the arbitrators found that the evidence did not justify the dismissal of an employee of so many years' standing. (Docket 2333.)

Was a Union justified in demanding the discharge of a foreman whose complaint had resulted in a worker's dismissal, and did such dismissal constitute a breach of the agreement by the Company?

The complaint of an assistant mill foreman about the manner in which a certain worker was performing his duties resulted in the discharge of the worker, whereupon the union demanded the discharge of the assistant foreman as a condition to allowing the other workers to start work on the 4 o'clock shift. When the employer refused, a stoppage was called by the union.

When the several questions arising out of this situation were submitted to arbitration, the arbitrator found that the agreement gave the company the right to discharge any employee, such discharge being subject to review, first, by the Grievance Committee and then by the employer and union jointly, with the worker entitled to reinstatement with back salary if found to have been discharged in violation of the agreement.

The arbitrator decided that the employer, by refusing to discharge the assistant foreman, did not breach any provision of the agreement and that the assistant foreman, by registering the complaint, was not guilty of a breach of orderly conduct, since it was within the scope of his duties to make such reports; furthermore, that the union, by making such a demand, was penalizing the company for something for which it was not responsible, and that the stoppage was a breach of the agreement.

In his award, the arbitrator directed that the assistant foreman and the discharged worker both be returned to their respective jobs immediately, the latter not being entitled to back pay since his discharge was not a breach of the agreement on the employer's part. (Docket 2213.)

Under what conditions does the "necessity" for the reduction of overhead expenses justify the discharge of an employee?

The contract between union and employer provided that the latter might reduce his overhead expenses by dispensing with the services of one or more employees, provided he could prove that there was a necessity for the relief. In this instance, when the demand for relief was made because of the small volume of business and recent losses sustained by employer, the union disputed the claim and demanded arbitration, in accordance with the terms of the contract.

At the hearing both the employer and the union presented statements of certified accountants of their own selection concerning the current condition and probable future trend of the employer's business. The arbitrator found that a comparison of these statements bore out the contention of the employer, basing his decision on the fact that the union's accountant had failed to take into account the employer's right to compensation in the form of salary for his own services as manager of the store. With this fact taken into consideration, the union's picture

of the solvency of employer's business was considerably altered, and the arbitrator decided that the relief sought should be granted to the extent of reducing the number of employees by one, such employee to be dismissed on the basis of seniority. (Docket 2122.)

Under a labor agreement requiring that all employees who are members of the Union must remain in good standing, must the Employer, under the terms of the contract, discharge five men when they refuse or neglect to pay their dues and, if so, on what grounds?

The question involved in this case was the interpretation of the following clause in the labor agreement entered into between the employer and the union upon the termination of a strike:

> "Employees who are members of the Union at the time of the signing of this contract and those who hereafter join the Union shall remain members in good standing in the Union until the expiration of this agreement, so that they will be in a position to carry out their responsibility in keeping the agreement in its entirety. The employer may hire Union or non-Union members in his own discretion and shall have a period of four weeks within which to discharge any such new employees. Any such employees retained after the four-week period shall be required to join the Union."

The union demanded the discharge of five members who refused to pay dues, on the ground that they were not in good standing and could not, therefore, remain in the company's employ. The company refused to accede to this demand, claiming that it had no concern with whether or not employees paid their union dues and that it was not required by the contract to discharge these men.

After hearing the contentions of the union and the employer, the arbitrator decided that the latter was obligated by the agreemen to discharge any employee union-member not in good standing, upon demand therefor by the union, one test of good standing being the payment of dues. The arbitrator held that, on the one hand, the agreement does not obligate the employer to determine himself whether any employee is or is not in good standing in his union membership, but that, on the other hand, it does obligate him to discontinue the employment of a worker when the union certifies such worker has ceased to be in good standing. (Docket 2324.)

INTERNATIONAL AND FOREIGN ARBITRATION*

WORLD PEACE THROUGH WORLD TRADE

BY

THOMAS J. WATSON †

PEACE on earth is a goal which people throughout the ages have sought but have never attained. The longing for peace is stronger today than ever before, for the very good reason that the alternative to peace appears to be the destruction of civilization as we understand it. The greater the forces that are used for war, the greater the incentive to direct such forces for peace. If the implements of war seem irresistible today, the implements of peace have equal possibilities.

With peace as the ideal of people generally, we at least have something upon which to build.

The surest road to world peace is along sound economic lines and proper trade relations between nations, with arbitration taking the place of force when disputes arise. When the nations of the world cooperate for their own common interests, it will result in a sounder material life, a higher standard of living and a better cultural and spiritual existence for the world as a whole.

When we plan for an economic basis of peace, we are, in reality, planning for peace fortified by the cooperation of the many in-

* This section is concerned primarily with the economic aspects of international peace and the functioning of international economic peace machinery and with its coordination with activities within States, as presented in the American Commercial and Industrial Sections, and the corresponding activities in other nations as set forth under Foreign Arbitration.

† President, International Business Machines Corporation; President, International Chamber of Commerce.

terests which make up our civilization. Goodwill, standards of living, education, cultural and spiritual ideals, mutual helpfulness, all of these have come to be viewed by business and industry as necessary considerations, which also hold out rich opportunities to serve humanity. Competition and cooperation, it has been discovered, can go hand in hand. People of many nationalities, we have learned, can work together with the common objective of adding to the fullness of life in their respective countries.

Business and finance are doing much to further the cause of peace, and they are prepared to do much more. Rapid progress, however, can be made only by hearty cooperation with many agencies—government, education, research, radio, the press, arbitration, and others—which in their several ways have already done a great deal toward bringing about better understanding among the nations.

Trade routes, the railways, the cables, the airways, form a network of communications which ties us all together. Rapid means of transportation and communication have narrowed distance and brought nations closer together.

A large number of educational institutions throughout the world are increasing their interest in educational work designed to promote goodwill and peace.

But with the best will in the world, and with the benefit of all the many agencies, national and international, that are laboring diligently for the spread of peace, we shall get so far and no farther, I believe, unless certain economic questions are dealt with fundamentally.

The joint committee of economic experts of the International Chamber of Commerce and the Carnegie Endowment for International Peace has recommended the following five-point program as the basis for the promotion of world trade and international peace: (1) International stabilization of currencies; (2) The revision of international trade barriers; (3) The settlement of international debts; (4) The limitation of armaments; (5) Improvement in the distribution of raw materials, food and clothing throughout the world.

Secretary of State Hull, with the endorsement of President Roosevelt, has, as we all know, made great strides in his effort to develop international trade. He has negotiated reciprocal trade agreements with seventeen countries, nine of them being with Latin American countries, and negotiations are under way between the United States and several others. He is proceeding on

the principle that a liberal flow of goods, back and forth, is the only means by which nations can prosper. It is the fashion, in certain quarters, to say that this country, with all its natural resources, could live independently of the rest of the world. No doubt it could, but its standards of living would greatly decline. Approximately one-third of the wool now used in clothing our people comes from abroad. Our chemical industry draws heavily on foreign sources for materials. We import about 40 per cent of the mercury used in this country for metal refining, printing, electrical refining, photography and the manufacture of technical and professional instruments.

We are dependent upon outside sources for all of the tin we use. Without this necessary material the people employed in our great canning and preserving industries would be thrown out of work.

Many valuable alloys which, although not used in great quantities, have a profound influence upon our mass production system come to us from other countries. We import 90 per cent of the antimony we use in storage batteries, cable coverings and bearing materials. We import 99 per cent of the chromium we use as a basis of stainless steel, and as a valuable alloy with aluminum for heat resisting purposes. Forty commodities from fifty-seven different countries are required to keep our great basic iron and steel industry going.

Imagine, also, what the situation would be in our automobile industry, which directly and indirectly gives employment to six million people, if we could not continue to import the ingredients of steel just mentioned, and rubber, of which America is the greatest consumer. We use more than half of the world's production. Our paper industry imports more than 50 per cent of its raw materials.

For these and other imports, we pay by our exports. International trade means buying as well as selling.

When the economic status of a country is in a healthy condition, when there is a proper flow of mutually profitable trade, the people themselves—their standards of living, their culture, and their outlook generally—are in a more healthy condition.

The natural resources of the earth are unevenly distributed. The United States, itself, blessed in this respect more than most of the nations, is dependent upon other countries for a long list of raw materials, in order to keep up its standard of living, as we have just seen.

Peoples who are operating on the expectation of a world at peace assume that they will have access to raw materials in exchange for articles other nations need from them. This should be the natural and normal outlook in a community of nations so closely bound together. Yet, in the past quarter-century, nations resorted, among other barriers, to trade quotas.

The stabilization of international currencies and the settlement of international debts on a basis that will be fair to debtor and creditor countries alike are important to the development of international trade.

On these questions, the International Chamber of Commerce has been working, and it has made progress. The five-point program is basic, I think, to any consideration of international goodwill. Our own government is studying them and various other agencies which I have mentioned are endeavoring to educate the public to an understanding of their importance.

Meanwhile, business and finance, as I indicated at the outset, are in a strategic position to be particularly helpful, for economics appears to be the crux; people must have the means with which to live contentedly, or they will feel that they are being deprived of the happiness to which hard work entitles them.

The hope is held out that, with the advantages which applied science has furnished, life can be made easier, time can be had for leisure, enjoyment and self-betterment.

It will become more and more apparent that with a more equitable distribution of opportunities, the nations may plan for a richer life for all classes. All of which may seem a big order, but if the principle is sound, cooperation in many quarters may be counted upon to promote it. World Peace through World Trade is a motto based on realities, since in these times assurance of the contentment of an individual nation is dependent upon the existence of a contented world.

International trade on fair terms is, I am confident, the entering wedge, but to drive it home we shall need, as I have pointed out, the best educational efforts of many agencies. Then we shall need effective machinery to deal promptly and justly with commercial disputes which might otherwise become causes of international misunderstandings. I have reserved for the last some mention of what may be expected from such machinery, judged by an inspiring record hitherto. This is in the field of arbitration. One can easily imagine how greatly its efforts

would be facilitated if there were at this time a proper flow of goods and services between nations.

Within the past decade or so, persons engaged in foreign trade have set up machinery for commercial arbitration, which represents the beginning of an international system having fairness and impartiality as its fundamental characteristics.

Comprised in such machinery are the tribunals, rules, practices and methods which business men have established to dispose of international commercial controversies.

In the United States, the machinery is under the direction of the American Arbitration Association, for all commercial controversies, domestic or foreign, which are to be settled within our territory. The Inter-American Commercial Arbitration Commission functions similarly for the whole Western Hemisphere, dealing with commercial disputes arising between business men in one republic and those in another. Such cases in Europe and the Eastern World are under the jurisdiction of the International Chamber of Commerce.

The British Empire has been busy building its own machinery, which is bound up with the Federation of British Chambers of Commerce and has the scope of the Empire itself.

Although these various agencies act more or less independently, they have as their common objective the protection of international trade from controversy and the promotion of commercial goodwill. They have in common administered tribunals and rules and standards. As they build laws in the various countries on much the same pattern, the courts are prepared to support the will to cooperate when good faith proves to be insufficient.

In their fundamentals, these systems are sound and of excellent character. They need, however, to be extended, so that every trade route will be fortified. Knowledge of them should be spread by a campaign of education. They lack the unification which will enable international trade to use them all simultaneously or inter-changeably, as may be required.

When we envisage world peace through world trade, we have in mind not only uniting nations by trade routes, and so distributing resources that they shall not be causes of war, but also assurance that along each of these routes there will be economic peace machinery for the safeguarding of the contracts and interests that hold the world together.

THE PLEBISCITE AND PEACEFUL CHANGE

BY

SARAH WAMBAUGH, DR. EN SOC., L. H. D., LL. D.*

IF peaceful change is to extend to frontiers, and the wish of the population is to be the determining factor, the plebiscite will be indispensable. Neither language statistics nor informal consultations by ambulatory commissions give reliable indication of the popular will. The only way is to ask the people themselves to declare it by secret ballot and under all the other conditions necessary to a free and fair vote. Only so will the plebiscite be convincing, and only a convincing plebiscite will be worth the taking.

Such a plebiscite is today no simple matter. Political science has grown extremely exigent regarding neutralization of the conditions under which the registration, the campaign and the voting shall be held. The progress in technique since the first plebiscite regarding sovereignty—that in Avignon and the Comyat Venaissin in 1791—gives ground for hope that man is, after all, a political animal.

The plebiscites of the French Revolution and the Italian Risorgimento were very primitive affairs indeed, with open voting under the auspices of one of the interested states without agreement with the other. By the middle of the nineteenth century political practice had grown considerably more mature and the secret ballot was the accepted rule in most parliamentary countries. The plebiscites of this period—in Savoy and Nice, in all the Italian provinces uniting under the crown of Sardinia, and in Moldavia and Wallachia, the Ionian Islands, the Danish West Indies, Saint Bartholomew and Norway—were no longer completely unilateral, for they were held under formal agreement either of the two interested states or their protectors among the Great Powers. Political science, however, did not yet require international or even bi-partisan supervision of registration and voting or control of the political administration of the area and there was no effort to secure international policing.

The Treaty of Versailles marked a great advance, not only in the number of plebisicites which it required in changing fron-

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tiers, but also in the provisions for international supervision. In Schleswig, East and West Prussia, and Upper Silesia, as well as in the plebiscite required by the Treaty of Saint Germain in Carinthia, the treaty provided an international Plebiscite Commission with jurisdiction not only over the registration and voting but also over the political administration of the area during the period of the campaign and vote. In each case the treaty removed the troops of both states and provided the Commission with an international force to maintain order. The Plebiscite Commissions took the place of the former governors and designated officers of their own staffs to watch over the local officials, some of whom they removed for misuse of their position. Neutralization was far from complete, however, for all of these votes were taken under the authority of the Supreme Council of the Allies and the Plebiscite Commissions, except that for Schleswig, were appointed exclusively from France, Great Britain, Italy and Japan—countries recently at war with Germany and Austria. Owing to the exigencies of European politics the result was, in fact, a balance of partisans, for the French favored the one side and the British leaned to the other.

The plebiscite in the Saar Territory in 1935 was the first to be held by the League of Nations. With its great reservoir of neutral members and its experience of 14 years in selecting for commissions of inquiry citizens of those states farthest removed from the controversy, it is not surprising that the League should have carried the technique of neutralization much further than had the Supreme Council. The members of the Saar Plebiscite Commission were appointed, not from among citizens of the Great Powers of Europe, but of The Netherlands, Sweden, Switzerland and the United States. The Commission had no jurisdiction over the political administration of the Territory, for this remained in the hands of the Governing Commission representing the League. The Plebiscite Commission, however, instructed its staff of neutrals, brought in from 16 different countries to supervise the registration and voting, to watch over the local officials also. To the special Plebiscite Tribunal, which was a far more formal and august body than those set up for the preceding plebiscites, local tribunals were added. Regarding registration and the casting and counting of the ballots, the Plebiscite Commission introduced a series of important innovations. It provided a neutral chair-

man for each registration board; it brought in over 900 more neutrals—Burgermeisters, judges and the like—from The Netherlands, Switzerland and Luxembourg to act as chairmen of the voting bureaus; and it retained enough of these to count the ballots under the supervision of the Commission and its staff. This counting of the ballots by neutrals was a most important step forward, for it not only insured complete secrecy of the ballot but inspired full confidence in such secrecy, which is the only conclusive answer to threats of revenge.

Finally, the international police force from Great Britain, Italy, The Netherlands and Sweden—the first to be brought together by the League—was neutral in fact as well as in theory.

While there is room for further progress in minor matters, the Saar marks the highest point which the technique of the plebiscite has yet achieved. Such an advance would not have been possible without the League of Nations. Any future plebiscite, to be absolutely convincing, must be held under the same auspices.

CONCILIATION OF COMMERCIAL DISPUTES *

BY

ANDRÉ BOISSIER †

THERE has been a steady growth in the number of disputes settled by conciliation within the framework of the International Chamber of Commerce's Court of Arbitration. The conciliation procedure is less familiar to business men than that of arbitration, and, moreover, is often viewed with some measure of scepticism. The fact nevertheless remains that 81 per cent of the highly diversified cases submitted to the International Chamber in the past few years have been definitely settled, with a minimum cost in time and money, by this method. The credit for this satisfactory result must largely go to the Conciliation Commission.

Presided over by the Secretary General of the International Chamber, or by the representative residing in Paris of one of the National Committees, this Commission includes delegates

* Reprinted from World Trade for April 1938, through the courtesy of the International Chamber of Commerce.

† Secretary-General, Court of Arbitration, International Chamber of Commerce.

of the National Committees of the countries to which the parties to the dispute belong. Whenever possible, the Commission hears the parties or their representatives. Otherwise, it forms its opinion on the basis of the statements of the case submitted to it. It may also, as an example quoted below shows, call in experts if the dispute is essentially technical in character. After thus hearing the evidence, it proposes to the parties the settlement which appears to it the most equitable.

The settlement proposed is not necessarily a compromise, as is often wrongly supposed. The Conciliation Commission sometimes confirms in full the claim of one of the parties. It aims at applying principles of equity, without, however, disregarding the law, and thus it quite frequently happens that the settlements it proposes are dictated by the application of rules of law. This is an important point, for it provides an answer to the objections which the principle of conciliation has often encountered. Thus, particularly in America, this procedure is regarded as a useless repetition of the already unsuccessful efforts made by the parties themselves before submitting their dispute to a third party. These critics consider that conciliation can lead only to an unsatisfactory, half-hearted solution of the dispute. At one of the Congresses of the International Chamber of Commerce, an American delegate argued this point of view and concluded that arbitration ought always to be resorted to at once, without any preliminary attempt at conciliation. In his opinion, what a party involved in a commercial dispute desires is a definitive settlement of the dispute based on an arbitration's award which goes to the root of the matter, even at the risk of the award going against the party in question.

This view would appear to be based on a mistaken interpretation of the word "conciliation", and seems to be sufficiently refuted by the simple fact that in 81 per cent of the cases which have come before the International Chamber in the past four years, the parties have, without any pressure, adopted the method of settlement proposed. They must, therefore, have found the procedure satisfactory. It not only put an end to their dispute as definitively as an arbitrator's award or a court decision would have done; it did more. The proceedings having taken place in an atmosphere of mutual consideration and courtesy, free from the bitterness which sometimes accompanies proceedings before an arbitrator or a judge, the end of the dis-

cussion left both parties on friendly terms, ready to do new business together in the future.

A few examples will serve to illustrate the foregoing remarks. In a Franco-Swiss dispute, the question at issue was the execution of contracts involving the granting of licenses for the manufacture and sale of a certain type of watch. The French inventor claimed from the Swiss licensee the payment of the balance of the royalties due under the contract, amounting to 3,000,000 francs. The licensee contested the validity of the invention in question. He not only refused to pay the sum claimed, but he made a counter-claim for the refund of the money which he had already paid, amounting to 550,000 francs.

After long deliberations, participated in by French and Swiss experts who were called into consultation, the Commission proposed to the parties that they agree to annul the contracts and that the licensee make a final settlement by paying a million francs to the inventor. In addition, a stock of watches and parts evaluated by the experts at 403,010 francs was to be returned to the French manufacturer. Both the parties accepted these proposals. A rapid and satisfactory settlement was thus reached in regard to a dispute which could not have been submitted to arbitration without great complications. For the French plaintiff could have opposed the execution of any award pronounced against him, on the ground that, under French law, questions referring to the validity of a patent are of public interest and cannot be withdrawn from the courts and submitted to arbitrators. The conciliation procedure made it possible to avoid this danger.

In another case, a German company had ordered two turbine engines in Switzerland. It refused to pay for this order, alleging that the vendor could not hold the company itself liable, since it had acted only as general contractor for a third company, as the contract in fact specified. The Swiss company contested this argument and demanded the payment of a sum of approximately 100,000 Swiss francs. After questioning the parties, the Conciliation Commission came to the conclusion that the German firm had assumed all the obligations of the contract for its own account. The order, it is true, stipulated that the payments to be made by the buyer were to be made from funds supplied by a third company, but this stipulation had no other object than to mark the difference between the source

of this sum, which was established in French francs, and that of another sum which was established in marks. It did not have the effect of modifying the nature of the obligations assumed by the buyer towards the vendor. The Commission was, therefore, inclined to grant the claim of the Swiss firm in full. But it gave some weight to the fact that the latter, in order to avoid any possible ambiguity, ought to have made it clear in the contract that the buyer remained financially liable whatever the source of the funds. At the same time it took into consideration the fact that the devaluations of the French and Swiss franc had resulted in lightening the German buyer's debt. All circumstances taken into account, the Conciliation Commission proposed that the vendor accept four-fifths of the price of the principal order, *viz.*, 319,504 French francs, in full settlement of all claims. The two parties accepted this and declared themselves satisfied with the settlement of their dispute.

In another case, the Commission did not formulate specific terms of settlement but enunciated the principle on which an agreement should be sought, and the parties drew up a new contract on that basis.

Sometimes the parties have enough confidence in the authority and competence of the Conciliation Commission to bind themselves in advance to submit to the method of settlement to be proposed by the Commission, thus departing from the usual procedure. In such cases, the Commission's proposal amount to quasi-arbitral awards. The following case is an example of this.

The dispute in question arose out of the devaluation of the Belgian currency, which took place in 1935, prior to the final payment for an order of machines amounting to some 10 million Belgian francs. The vendor, of French nationality, claimed indemnity for loss incurred through the devaluation. He based his claim on two arguments. First, he claimed that the Belgian buyer had unjustifiedly delayed the payment of the last two instalments of his debt. Secondly, he referred to an arrangement made with the buyer by which the latter was to pay a certain part of the sum due to the vendor to a third party designated by the vendor. This sum, if converted into French francs in time, would have represented 750,000 French francs. The vendor claimed negligence on the part of the buyer in not con-

verting the said sum of Belgian francs into French francs soon enough, thus involving the use of a larger part of the total Belgian franc debt due to the vendor in order to settle the claim of the third party. The total amount claimed in this case by the vendor in respect of exchange loss was 550,000 French francs. The Belgian buyer invoked in his defense circumstances beyond his control.

The Conciliation Commission considered that the buyer ought to assume the whole of the exchange loss on the penultimate instalment of the debt, amounting to about 190,000 French francs, the payment made having, in its view, been unduly delayed. As to the exchange loss in connection with the sum of 750,000 French francs, it was proposed that the buyer bear only three-quarters of it, an objection raised by the vendor having prevented him, until within a few days of the setting up of exchange control and the devaluation of the currency in Belgium, from making payment to the third party specified by the vendor. As to the last instalment of the debt, the Commission found that payment had been held up, but that this was justified by the fact that another firm to whom the Belgian buyer had resold the goods, had expressed reserves about their quality. The Belgian buyer was not, said the Commission, responsible for the exchange loss suffered by the vendor on this last instalment. The final settlement between the parties involved the payment of 340,000 French francs by the buyer. He paid them within a short time, and a somewhat complicated issue was thus settled satisfactorily without litigation.

Many other cases could be quoted showing that the machinery of the Conciliation Commission is very successful in bringing about carefully considered and equitable settlements of commercial disputes. But the examples already mentioned will no doubt supply sufficient data to permit those interested to form their own opinion on this point.

For more than 15 years, the International Chamber of Commerce has continuously urged resort to arbitration for the settlement of international commercial disputes. It appeals to business men to arbitrate rather than litigate, and to this appeal it adds the advice to attempt conciliation before going to arbitration.

INTERNATIONAL NOTES

New Collaborators. THE ARBITRATION JOURNAL takes pleasure in announcing the recent addition of six new members to its distinguished group of foreign collaborators. Those who have become associated with THE JOURNAL since the first of the year include: A. C. Breycha-Vauthier, Law Librarian, League of Nations, Geneva; Dr. W. Burckhardt, well-known authority on international law, Bern; B. P. Cristall, Secretary of the Chamber of Commerce of Burma, Rangoon and our first collaborator in India; Thomas F. Gray, Secretary of the Bradford (England) Chamber of Commerce; Juan Vicente Ramirez, lawyer and diplomat, of Asuncion, Paraguay; George Ridgeway, of the Corn Trade Association, Ltd., of Liverpool, and Kenneth Wallace, of the Provision Trade Association, also of Liverpool. These additions bring the number of foreign collaborators to 55, representing 47 of the principal cities of the world.

The Editorial Board of THE JOURNAL takes this opportunity to express publicly its deep appreciation of the invaluable assistance and generous cooperation of its collaborators, who have, upon their own initiative and in response to requests, supplied THE JOURNAL with material which could not otherwise have been obtained and have made possible the extension of THE JOURNAL'S scope into the field of international arbitration.

Use of Broadcasting in the Cause of Peace. The International Convention concerning the use of Broadcasting in the Cause of Peace went into effect on April 1, the necessary ratification of seven states having been obtained. The states are the United Kingdom, France, Denmark, Brazil. Luxembourg, New Zealand and India. Twenty-eight states signed the Convention, but Germany, Italy, Japan and the United States did not attend the conferences.

The Convention was drafted in 1936 and provides that the high contracting parties mutually undertake to prohibit and stop, without delay, broadcasting within their territories which, to the detriment of good international understanding, is of such a character as to incite the population to acts incompatible with the internal order or security of its territory, or which may be an incitement to war against another high contracting party. It also provides that the parties will prohibit or stop, without

delay, any transmissions likely to harm good international understanding by incorrect statements and shall rectify these at the earliest possible time; and that, in times of crisis, stations within their respective territories shall broadcast only verified information. Each party also undertakes to place at the disposal of another party information to facilitate broadcasting of items calculated to promote a better knowledge of the civilization and conditions of life in its own country as well as the essential features of the development of its relations with other peoples and of its contribution to the organization of peace. To put this Convention into real effect, each party will undertake to issue appropriate instructions and regulations and to secure their application.

With respect to the settlement of disputes arising under the Convention, if it is found impossible to adjust them through diplomatic channels, recourse may be had to arbitration by the Permanent Court of International Justice if all the contending parties are signatory to its Protocol and, if not, the dispute shall be referred to the Permanent Court of Arbitration at The Hague. By common consent, however, the parties may elect to appeal to the good offices of the International Committee on Intellectual Cooperation, which would be in a position to constitute a special committee for the purpose.

U. S. Fills Vacancies on Hague Court. Announcement was made by the U. S. Department of State on February 16 of the appointment of Henry L. Stimson (New York) and Michael Francis Doyle (Philadelphia) as members of the Permanent Court of Arbitration at The Hague. Mr. Doyle, who was a delegate of the United States at the recent Inter-American Conference for the Maintenance of Peace held at Buenos Aires in 1937, succeeds the late Newton D. Baker, and Mr. Stimson will fill the position formerly held by the Hon. John Bassett Moore, whose term has expired.

Under the terms of the conventions creating the Permanent Court of Arbitration the contracting parties are privileged to appoint not more than four nationals to constitute a panel of judges from which, in the event of a dispute being referred to the Court, the parties thereto may select arbitrators. The other two American members of the Court are Judge Manley O. Hudson, who is also a Judge of the Permanent Court of International Justice, and Green H. Hackworth.

International Studies Conference. At a time when the United States government is seeking to promote peace by fostering closer commercial relations among the nations through reciprocal trade agreements, and when the dictator countries are striving vigorously to become self-sustaining, special interest and importance attach to the program which the International Studies Conference has mapped out for the next two years. The subject selected for study is "Economic Policies in Relation to World Peace". The specific policies which will engage the attention of the Conference are reciprocity, regionalism and economic self-sufficiency. They are to be studied with particular reference to their bearing on national security and the political and economic relations among nations.

The Conference will hold its initial discussion of this subject at a meeting in Prague on May 23-27. This meeting will be preparatory to the plenary session which will be held in 1939, and for which groups of experts in some 20-odd countries are now engaged in research and the drafting of reports. At the previous plenary session at Paris in June, 1937, over a hundred of such reports on the subject then under investigation (Peaceful Change) were submitted by delegations from 21 countries and from a number of such international institutions as the Institute of Pacific Relations, the Geneva Research Centre and the International Labor Office. At that meeting the United States delegation submitted six reports, three of which have since been published in book form, as follows: *Raw Materials in Peace and War* by Professor Eugene Staley of the University of Chicago; *Peaceful Change*[1] by Professor Frederick Sherwood Dunn of Yale University; and *Limits of Land Settlement* by 10 authors, under the editorship of President Isaiah Bowman of Johns Hopkins University. A high official of the Conference, in a letter to the American Coordinating Committee, which had general supervision of the preparation of the documents, said: "In these memoranda you have set a standard of quality for conference documents which it will be difficult to attain in the future."

As its name implies, the International Studies Conference is an organization designed to foster cooperation and coordination among institutions engaged in the study of international affairs. It seeks to provide a common meeting place for students

[1] Reviewed in the previous issue of THE JOURNAL (p. 51).

from all parts of the world and to enable them to test the results of their investigations by discussions with workers in the same field from other lands. The Conference came into existence in March, 1928, at a meeting in Berlin sponsored by the International Institute of Intellectual Cooperation. The United States was first represented at a meeting in London in the following year, and American cooperation in the work of the Conference has since been continuous and on an expanding scale. At the Paris meeting last June the chairman of the plenary session was Mr. John Foster Dulles of New York.

The work in the United States is under the general supervision of an American Coordinating Committee for International Studies, consisting of representatives of six American universities and of the American National Committee for Intellectual Cooperation, the Council on Foreign Relations, the Foreign Policy Association and the American Council of the Institute of Pacific Relations. The university membership is rotated among various institutions by the retirement of two members each year and the appointment of new members by the Social Science Research Council. Similar coordinating committees are functioning for the other countries participating in the Conference.

The reports which the American Committee submits to the Conference are prepared by carefully selected experts who are made solely responsible for the conclusions embodied in the reports. These documents are not presented as statements of the national point of view or even as the views of all the members of the Committee. They are offered only as contributions by competent investigators to a better understanding of international problems engaging the attention of thoughtful people throughout the world.—WILLIAM O. SCROGGS.

Conference on World Economic Cooperation. Delegates from the 40 member organizations of the National Peace Conference, in its campaign for World Economic Cooperation, met in Washington March 23-26 to consider the report of its Committee of Experts on this subject. In presenting its Report, the Committee pointed out that the remarkable thing about all recent expert reports is their unanimity on essentials. On this point the Committee stated:

> All of them repudiate notions of economic isolation, self-sufficiency, or autarchy and urge revival of international trade; all of them agree

> that barriers to trade have reached fantastic heights and that the most urgent problem of international economic policy is to bring them down; all of them condemn the quota systems, bilateralism, and exchange controls now so prevalent as even more destructive of trade than old-fashioned protective tariffs and urge measures for their removal as rapidly as the passing of emergency conditions will permit; all of them recognize the need for international agreements to promote stability in the relationships of one currency to other currencies; all of them urge that reasonable measures be adopted between debtors and creditors in order to remove from the path of future trade development the obstacles resulting from old unadjusted debts, political and commercial. We do not depart from this unanimity of view.

The Committee considered as the general objective of world-wide economic cooperation the greater interchange of goods and services between the United States and peoples abroad and among nations generally; the results of which are to increase the economic well-being of masses of people and to provide a more stable foundation for peace and contribute more powerfully to general political and social appeasement. It is the view of the Committee that "trade can be called the world's most potent instrument for peaceful change".

In its recommendations the Committee included whole-hearted support of Secretary Hull's reciprocal trade agreements, international measures looking toward the suppression of the quota system of restricting imports, reduction of tariff barriers, international agreements to combat "indirect protection" or concealed barriers to trade, support of cooperative measures for the maintenance of reasonable stability of exchange rates, efforts to establish conditions favorable to a healthy international flow of capital, progressive abolition of the exchange controls and clearing systems, tending to reduce red tape, early negotiations toward a Pact of Economic Collaboration and conscious attention to the problem of economic demobilization for war in favor of mobilization for peace.

Of especial interest to Journal readers is the suggestion for an automatic international commercial organization "to promote mutually beneficial trade between nations and to have power to promote international conventions for ratification by governments". It is suggested that nations become members of such an organization and that it be set up under the League of Nations in somewhat the same manner as the International Labour Office. Although not clearly indicated, it is presumed the work of this proposed organization of nations would be coordinated

with that of the International Chamber of Commerce which carries on similar work under non-official auspices.

In general, the report indicates a program for discussion, education and coordination and indicates a new field for the activities of peace organizations—one so complex that the Conference is well advised to have a Committee of Economic Experts to guide it.

Arbitration Recommended in van Zeeland Report. Paul van Zeeland, of Belgium, in his report made to various European countries on the subject of International Economic Reconstruction, made the following references to conciliation and arbitration, in connection with a discussion of bilateral agreements and commercial treaties:

> However, when it comes to applying the stipulations of commercial treaties, or when we are confronted by one of those unforeseeable cases such as so often arise in business life, then it is desirable also to resort to another more elastic procedure, which reserves to the parties concerned all necessary liberty of action, while preventing abuses.
>
> For this purpose, it would be wise to have recourse much more widely to the creation of "joint committees", the opinion of which could be invoked by either of the interested parties if he feels that he has cause for complaint against some unfair practice in the nature of indirect protection.
>
> Further, in cases where this method of conciliation does not succeed, it would be desirable that interested States should undertake to accept the award of an appropriate arbitral body.
>
> There are already arbitral bodies in existence whose good offices it would be easy to utilize for this purpose. Mention may be made, among others, of the "procedure for friendly settlement between States of differences of an economic character" instituted by resolution of the Council of the League of Nations in 1932 and also the arbitral court of the International Chamber of Commerce.

Progress of Committee on International Loan Contracts. In 1936 a Committee on International Loan Contracts was created by the League of Nations "to examine the means for improving contracts relating to international loans issued by Governments or other public authorities in the future and, in particular, to prepare model provisions—if necessary, with a system of arbitration—which could, if the parties concerned so desired, be inserted in such contracts".

THE JOURNAL has been advised by the League of Nations that several sessions of the Committee have been held and that its

report will be available as soon as its work is completed. THE JOURNAL hopes to present to its readers, in an early issue, a more comprehensive article on the activities of the Committee.

The members of the Committee are the following: L. Baranski, Director-General of the Bank of Poland; J. Basdevant, Legal Adviser at the Ministry of Foreign Affairs, Paris; Reuben Clark, President of the Foreign Bondholders Protective Council, New York; A. Fachiri, Barrister-at-Law, Great Britain; M. Golay, General Manager of the Swiss Banking Corporation, Bâle; A. Janssen, President of the Société Belge de Banque, Belgium; O. Moreau-Néret, Director of the Crédit Lyonnais, France; Sir Otto Niemeyer, of the Bank of England and President of the Board of the Bank for International Settlements; H. A. van Nierop, Director of the Amsterdamsche Bank, Amsterdam; V. Pospisil, former Governor of the National Bank of Czechoslovakia.

INDUSTRIAL NOTES

French Labor Code. On March 4 the French Parliament passed a conciliation and arbitration act, the first of six measures constituting a modern French labor code. Besides an extensive provision for the conciliation and obligatory arbitration of all labor disputes, the Act includes the controversial "sliding-wage scale" which provides for the adjustment of wages to variations in the cost of living.

The measure, which does not apply to agricultural and professional workers, provides that wages shall be adjusted every six months to living costs if the Official Index shows a variation of at least 5 per cent and puts upon the employer the burden of proving that his business cannot afford such increase. Theoretically it applies in the case of falling living costs as well as rising.

The purpose of the Modern Labor Statute is declared in the report of the Labor Committee of the Chamber of Deputies to be to "extend the rule of law to the greatest number of labor disputes, by offering to the parties concerned acceptable means of settling them peaceably". The six bills which incorporate these aims cover the following points, in addition to the sliding wage scale provision: (1) conciliation of labor disputes and, if this fails, their obligatory arbitration, these processes being speeded up by the present law; (2) collective bargaining and collective

labor contracts; (3) the abolition of private employment agencies and the development and extension of State bureaus; (4) the hiring of workers from lists established by the labor unions and restricting the right of the employer to discharge workers except under certain specified conditions; (5) protection of the union spokesman from discrimination by the employer; and (6) the taking of a secret ballot promptly after a strike occurs, to determine whether a majority of the workers favor continuing the strike or returning to work.

Wage Arbitrations in France. THE JOURNAL is indebted to the American Trade Commissioner in Paris for a report dealing with two wage arbitrations conducted in France last year, which are particularly interesting in the light of the passage of the sliding wage scale measure reported above and indicate a tendency to base wage demands on living costs in spite of the rejection, in 1936, of similar legislation.

One of these cases was the so-called Villette arbitration, concerning wage increases to workers in the Paris building industry. The workers demanded an increase last summer, in view of a rise in living costs since the last increase was granted in February, 1937. The arbitrator calculated an increase in living costs between February and September of approximately nine per cent. At the same time he took into consideration the depressed state of the Paris building industry and the dangers of unrestricted wage increases, and granted an increase of five per cent on average wages and a further increase of one per cent to compensate the workers for the long delay in settling the question. Increases were also given in the family allotments which are granted to workers with families.

The other case involved the workers in the Paris metallurgical industry who had demanded wage increases in July, 1937, and as the costs of living went up, their demands were increased to a maximum of 15 per cent. As a result of the arbitration the workers were granted an increase of six per cent.

Civil Service Arbitration in Great Britain. Machinery for the arbitration of claims of civil servants in Great Britain, affecting emoluments, weekly hours of work, overtime rates, annual leaves and the like, is provided under an agreement dated February 19, 1925, between the Lords Commissioners of His Majesty's

Treasury and the Staff Side of the National Whitley Council. In October, 1936, certain modifications were made in the procedure provided under the 1925 agreement, whereby claims of civil servants are dealt with by Civil Service Arbitration Tribunal instead of by an Industrial Court as formerly. The 1936 agreement provides:

> Where there is failure to agree on a claim falling within the limits set out below, the case shall be reported by or on behalf of either of the parties to the dispute to the Minister of Labour for reference to arbitration by a Tribunal consisting of an independent Chairman and one member drawn from a panel of persons appointed by the Minister of Labour as representing the Chancellor of the Exchequer for the time being and one member drawn from a panel of persons appointed by the Minister as representing the Staff Side of the National Whitley Council for the Administrative and Legal Departments of the Civil Service. The Chairman of the Tribunal shall be the President of the Industrial Court, or, failing him, a person appointed by the Minister of Labour after consultation with the parties to this agreement and the members of the Tribunal shall be such members of the Panels as the Chairman may direct.

Arbitration by the Tribunal is limited to claims of classes of civil servants with salaries not in excess of £700 a year, exclusive of bonus, except in cases of classes for which the scale of pay commences at a figure of less than £700 but rises in excess of that amount. Exceptions to this provision may be made with the consent of both parties concerned in the claim.

Up to December 31, 1937, 252 cases have been referred to arbitration under these agreements, 237 from 1925 to 1936 to the Industrial Court and 15 in 1937 to the Civil Service Arbitration Tribunal. They have varied as to the number of persons concerned from a case affecting one person to one involving 142,000 employees of the Post Office.

Nine-Year Arbitration Agreement for Swedish Newspapers. The Swedish Typographers Union has concluded a collective agreement with 140 publishers of 270 newspapers which runs for a period of nine years and provides for general increases in wages. The agreement also provides a procedure for negotiating disputes which may arise as to wages and conditions of work and for compulsory arbitration in the event no agreement can be reached by the parties themselves.

A permanent arbitration court will be established composed of three members appointed by agreement of the employers and

the workers, but who may not belong to either of these organizations. During the life of the agreement there are to be no strikes nor lockouts, all differences to be subject to either negotiation or arbitration.

Canadian Industry Seeks Extension of Conciliation Act. The Trades and Labor Congress of Canada is advocating the amendment and extension of the Industrial Disputes Investigation Act which now applies only to those industries which are designated as public utilities, and which has been successful in preventing scores of strikes and leading to a better understanding between management and labor in Canada.

The Act is based upon the principles of conciliation and those who come under its provisions can freely organize and, in the event of their failing to secure satisfaction through direct negotiation, may apply for a board of conciliation. Practically every provincial legislature has adopted the Act and in a good many instances the Department of Labor, which administers the Act, is able to adjust difficulties through the agency of its expert conciliators, thus obviating the necessity for a board of conciliation. Advocates of a nation-wide Act to apply to all persons engaged in any gainful employment claim that this extension would enable the workers to come into more frequent contact with their employers and bring about a cooperation that would inure to the advantage of both.

In discussing the advantages of a nation-wide Disputes Act in the *Canadian Congress Journal*,[1] Mr. Bernard Rose says: "The experienced lawyer knows the value, as well as the virtue, of inducing his clients to settle matters out of court, if it is at all possible. Adjusting disputes without a resort to a strike or being forced to accept the ruling of a body or commission, over which the workers have no control, is far more advantageous to the interested parties than a resort to the first or compulsory acceptance of the second."

COMMERCIAL NOTES

Arbitration Under the Rules of the Bradford Chamber of Commerce (England). From its foundation in 1851 the Bradford

[1] Volume XVII, Number 2, February 1938.

Chamber of Commerce has taken a vital interest in commercial arbitrations. Its rules, modified from time to time to provide readier and speedier means of settlement, are specially framed for dealing with textile disputes and the Panel of Arbitrators is made up of practical business men.

From 1921, on the advice of Counsel, the arbitrators have been given powers to adopt such procedure or admit such evidence as they may think desirable. As occasion arises, two or more arbitrators are chosen from the Panel who have knowledge of the class of goods in dispute. Their services are purely voluntary and no arbitrator is chosen who has interest directly or indirectly with the contending parties. This ensures the impartiality of awards, and the Chamber may well be proud that in this important respect a fine tradition has been established. There is world-wide recognition of the impartiality of these awards, and many disputes have been referred to the Chamber in which both parties have been foreign nationals.

Arbitrators may have legal advice or assistance, but without their consent professional appearances are not allowed for either disputant except for the purpose of giving evidence. They decide whether the subject-matter can best be dealt with by receiving written or oral evidence, or whether evidence will be heard in the absence of the opposing party or witnesses. The parties, however, are given every opportunity of elucidating and establishing their respective cases, and they are subjected to no prejudicial restrictions. Decisions usually can be reached from statements supplied, sometimes supplemented by inspection of goods, but opportunity is given to tender further evidence before an award is made.

When more than two arbitrators are appointed, a majority award is final and binding. In the event of failure to reach agreement or a majority decision, the arbitrators themselves appoint an umpire or, if they cannot agree upon one, the Arbitration Committee of the Chamber appoints one whose decision is binding.

The cases dealt with vary widely from relatively simple questions of fact, such as differences concerning delivery of goods, in which expert knowledge can readily assess allowances to meet particular circumstances, to highly technical problems requiring a tremendous amount of investigation. Between 1900 and 1937, disputes to the number of 971 have been settled. Summaries of a few recent cases follow:

1. A buyer of 11,000 lbs. of combed wool tops asserted that delivery was not equal to basis sample and claimed an allowance. The arbitrators found the delivery slightly inferior to the basis sample and awarded an allowance of ½*d* per pound in full settlement of claims.

2. Purchasers of a quantity of Botany Yarn in hanks, supplied to them by spinners, and dyed for the purchasers by the dyers, rejected the yarn as defective because the shades came up "barry" when knitted. The arbitrators' examination and tests of both the fabric and the yarns revealed a slight general unevenness of dyeing throughout, rather than a clear division into lighter and darker portions, both of which in themselves were even. The portions of fabric on either side of the "bar", and particularly the darker ones, were thus uneven and there was no continuous length of even fabric, either light or dark, on one side of the line or the other. The same fault, although less easy to detect, was visible in the yarns. This was fundamentally the dyers' responsibility, and there was no evidence of responsibility attaching to the spinner. The dyers, therefore, were ordered to pay the loss, damage and costs occasioned by the faulty work.

3. The buyer of a gabardine cloth claimed damages from the manufacturer for seams "slipping" in the made-up garments when subjected to continual strain. The arbitrators decided that there was a "slipping" tendency but that in this construction of cloth the fact of "slipping" was well-known in the trade so that makers-up were not relieved of responsibility for testing the sample length delivered to them and ascertaining whether the cloth was suitable for the particular class of trade for which it was intended. The buyer made no claim that the cloth delivered was not equal to the sample length. The award, therefore, was made against the buyer.—THOMAS F. GRAY.

Facilities of the Court of Arbitration of the Oslo Bourse. The Court of Arbitration of the Oslo Bourse was established for the purpose of adjudicating disputes, voluntarily submitted, arising between buyers and sellers relating to the quality of merchandise or concerning matters of commerce, including shipping, insurance and stock transactions.

For this purpose the Bourse Committee appoints bi-annually a Permanent Board of Arbitrators consisting of at least 100 members, respresenting various lines of industry. Applications for

arbitration are made in writing and must be accompanied by the contract and certain other specified documents and a declaration by both parties that they will accept as final and binding the award of the arbitrators.

Proceedings are before three or, if the importance of the case warrants, five arbitrators appointed by the Bourse Committee from the Panel, the arbitrators in each case designating the one to act as umpire or chairman. Parties have the right to challenge the arbitrators so appointed, and as the decision as to whether or not the protest is to be acted upon rests with the arbitrators themselves, the challenging party has the right to appeal to the Town Court of Oslo for final decision.

The parties must furnish the particulars considered necessary by the arbitrators, and if, in the latters' opinion, the dispute is not suitable for adjudication by the Court of Arbitration, the case is rejected and the arbitration agreement is void. If the case proceeds, the arbitrators are required to give their judgment within 14 days after receiving all evidence, the judgment being entered in an official register and a copy sent to each party. Decisions may not be made public without the consent of the parties, and the arbitrators are bound to secrecy. Decisions of the Court are final and binding except for reasons respecting procedure which exist under the law for the nullification of arbitrations.

The expenses in connection with each arbitration include: Office fee Kr. 20 and a fee of Kr. 20 to each arbitrator. The Bourse Committee, however, may increase this remuneration if circumstances warrant, and the arbitrators decide which of the parties is to defray costs and charges.

Significance of National Foreign Trade Week. Each year for the past eight years National Foreign Trade Week has been observed with a steadily increasing amount of public attention and participation throughout the United States. Its purpose, in a thumb nail description, is to arouse public opinion to the realization that our domestic prosperity is dependent upon larger exports, and that we cannot sell unless we buy, nor export unless we import. It seeks to spread the truth that under normal conditions our exports, our imports and our industrial activity all rise and fall on the same wave length according to economic law.

The observance of National Foreign Trade Week first started in Los Angeles and proved to be so successful an agency in

focusing public opinion on the importance of the subject that it was eventually adopted on a national basis by the Foreign Commerce Department of the Chamber of Commerce of the United States. The national program which is to be carried out this year embraces addresses, broadcasts and ceremonies of various kinds, in which more than 1,700 trade groups and civic bodies in about 1,000 American cities will participate.

National Foreign Trade Week always falls at the latter end of May and generally includes Maritime Day, May 22, which is officially proclaimed by the President of the United States. This day commemorates the voyage of the "Savannah" in 1819, the first steamship to make an ocean voyage. This year, owing to the fact that May 22 falls on Sunday, Maritime Day is to be observed on Saturday, May 21, and the day will be commemorated under the general auspices of the Propeller Club of the United States with appropriate ceremonies throughout the country.

The outstanding event of Foreign Trade Week in New York this year will be a world trade dinner which is now planned to be held on Wednesday, May 25. The Chairman of the National Foreign Trade Council, Mr. James A. Farrell, will be the Chairman of this dinner and it is anticipated that its proceedings will be widely broadcast, not only throughout the country but abroad. One of the interesting events that will happen during the evening will be the announcement of the Robert Dollar Annual Memorial Award, to be made in recognition of the individual in the United States who has contributed most to foreign trade in the preceding year.

Among the luncheons, dinners, and general meetings throughout the country during National Foreign Trade Week, it is also interesting to note that on Tuesday, May 24, there will be a luncheon under the auspices of the American Arbitration Association at the Waldorf Astoria Hotel in New York, at which the Association's Gold Medal for the promotion of international goodwill and distinguished service in commercial peace will be awarded to Mr. Juan T. Trippe, President of Pan American Airways. Mr. F. Trubee Davison will act as chairman of the Committee on Arrangements for the luncheon.

National Foreign Trade Week is an ambitious undertaking, and it is a healthy sign that participation in it is more extensive and more widely representative each succeeding year. The effort to bring home to the average citizen and the average family the

foreign trade facts which affect the personal budget must be focused for this purpose in a graphic and dramatized presentation. This is all the more necessary because, in its essence, our foreign trade must be rescued from the statistical tables of government officials and expressed in human equations, if its real service to all of us is to be preserved and strengthened.—GARDNER HARDING.

COMMERCIAL ARBITRATION AWARDS

Obligations of a Foreign Company to British Income Tax Authorities. About 12 years ago, a company of a country on the European continent entered into an agreement with a British company for the rights of exploiting in the British Empire certain patents taken out previously in England, in exchange for which right the British company undertook to pay the foreign company a minimum of £4,000 per annum. At the end of the first year, the British company deducted from the £4,000 a sum of £800 as income tax due by the foreign company to the British authorities. The parties thereupon embarked on the following duologue:

Continental Company: By what right do you keep back £800 when you agreed to pay me £4,000 without there ever being any question of a deduction? If the British Income Tax Authorities claim anything, that is your business. You never informed me that income tax would be deducted. If I had been so advised, I should most certainly have insisted upon other terms so as to receive at any rate my minimum of £4,000.

British Company: But the British law. . . . .

Continental Company: The will of the parties ought to come before the laws by which they are governed. I quite remember you wanted the contract to be deemed made in England and governed by British law. But I refused. Only one thing was agreed: that each party was to pay its own costs in connection with the contract. I pay any stamp duties, costs and fees payable in France. The British taxes are your business!

British Company: I am afraid we must agree to differ. The British Income Tax Act 1918 authorizes any exploiter of patents paying a royalty to the owner to deduct from this royalty the amount of the tax to which the royalty is liable. You were bound

by this law even if you were not acquainted with it; and it was your duty to know it without our having to inform you on this point. As a matter of fact, it is so well known in England that it is never referred to in a license. You were at liberty to demand £4,000 free of all taxes, but we should never have accepted this stipulation. As for your argument concerning stamp duties and fees, these are special payments and have no connection with income tax.

The nut was a difficult one to crack. Both parties were doubtless sincere, the British company in stating that it had not mentioned income tax since this was a foregone conclusion—the continental company in replying: "I have contracted for a minimum of £4,000 and mean to have it."

What was to be done? A British court would have naturally decided in favour of the British company, whereas a continental court would doubtless have supported the claims of its countrymen. And, in any case, the proceedings would have been lengthy and expensive.

But the contract contained an arbitration clause, under which the parties submitted the case to the International Chamber of Commerce. This organization appointed as arbitrator the late Mr. André Taillefer, *rapporteur général* of the International Association for the Protection of Industrial Property and considered, in this capacity, as an international authority on the questions of patents and licenses.

In his award—which was final and binding—Mr. Taillefer, acting as *"Amiable Compositeur"*, noted that by taking out patents in England, the continental company had become liable for the payment of income tax and that the British company was legally justified in withholding the amount due for taxes from the sums paid by it to the continental company. But he also took note of the good faith of the latter in respect of its claim for a minimum of £4,000 per annum.

He concluded: "Whereas the good faith of the contracting parties in regard to their respective claims seems evident; that it would be contrary to the spirit of the contract to make the continental company bear the total amount of the income tax payment and that it is equitable, in these circumstances, to divide between the parties the tax charge affecting the royalties stipulated." . . . .

The continental company was, therefore, condemned to pay the British company the sum of £400. For the same reasons, the costs of the arbitration, amounting to 1800 francs, were borne in equal shares by both parties.

Oral Modification of Foreign Trade Sales Contract. A sales agent of a vegetable oil producer in Japan sold, in February, 1936, to an American paint manufacturing company 160,000 pounds of a certain type of vegetable oil, for deliveries "from September through the balance of the year 1936". At the time the contract was made there was no import duty imposed on such oil by the United States Government, but in view of an anticipated duty which might be levied before the date of final delivery, a condition was inserted in the contract reading as follows:

> This sale is based upon the present Tariff and Customs House Classifications. Any increase in duty due either to a change in the rate or method of assessment shall be for buyer's account.

In June, 1936, Congress passed an Act placing an import duty of 4½ cents a pound on vegetable oil of the type in question, effective August 21, 1936, as a result of which the sales value of oil already in storage in this country or such as might be expedited into the United States prior to August 21, became enhanced by the amount of the tariff. Under these conditions and immediately after the adoption of the duty, the parties made oral modifications of their written agreement. There were conflicting versions of just what these modifications had been and, as advanced by the contending parties during an arbitration held thereon in May, 1937, they may be summarized as follows:

Seller's Contention: That the buyer prevailed upon the seller to expedite deliveries prior to September, 1936, and agreed therefore to pay 2¼ cents per pound over the contract price on all deliveries to be made, irrespective of whether such deliveries did or did not escape the duty of 4½ cents per pound, effective August 21, 1936, and in reliance upon such promise the seller between July 2, 1936, and August 21, 1936, delivered to the buyer 46,000 pounds of oil and from August 21, 1936, to the date of the submission agreement a further quantity of 91,000 pounds. The seller therefore claimed that the buyer was liable to pay to it 2¼ cents per pound on 137,000 pounds of oil and a like increase upon the undelivered balance of 23,000 pounds as called for by the contract.

Buyer's Contention: That the seller, in modifying the written agreement relative to the expedition of deliveries prior to the effective date of the duty, August 21, 1936, should fix the increase in price only after the seller had ascertained the extra expense actually incurred by it in delivering the cargoes of oil prior to the effective date of the increase in duty and only after the seller had properly apportioned such expense over all its outstanding contracts for the delivery of oil. The buyer further contended that the seller had orally waived the clause as to any increase in duty to be assumed by it on all shipments to be made subsequent to the effective date of the tariff.

These conflicting contentions were not supported on either side by documentary evidence and the arbitrators, men versed in similar transactions in foreign trade, were left to reach a finding based upon the inherent probabilities of the case. In this respect the contentions of the seller carried weight against the claims of the buyer, chiefly because the buyer's version was vague and actually impossible of practical application according to its alleged terms. The award directed that the buyer pay 2¼ cents per pound additional on the 137,000 pounds of oil delivered, with no additional sum to be paid on the undelivered 23,000 pounds.

INTER-AMERICAN COMMERCIAL ARBITRATION AND GOODWILL

New Arbitration Law in Colombia. The first step in putting into legal practice the arbitration standards recommended by the Seventh International Conference of American States has been taken by the Republic of Colombia, by the enactment of a modern arbitration law recognizing the validity of an arbitration clause in contracts and providing for the finality of the awards of arbitrators. This law became effective as Law 2 of 1938 on February 25.

This law is of the greatest importance to Colombian trade, for the recognition of the legal validity of the clause will doubtless lead to the more frequent use of arbitration and it will greatly benefit exporters and importers doing business with Colombia. An arbitration clause in a contract with Colombian business men now means that a friendly and speedy method for the solution of possible misunderstandings or differences will be assured to any person or firm or corporation dealing with them.

In this connection it should be remembered that, when inserting an arbitration clause in a contract, it is highly desirable to refer to the rules and facilities of an established commercial organization, as such reference determines the procedure and saves possible later delays which may occur when no procedure has been agreed upon in advance. Two practical arbitration clauses for use in international trade are the clause recommended by the International Chamber of Commerce and that of the Inter-American Commercial Arbitration Commission. Both are available at the office of the Inter-American Commercial Arbitration Commission, 8 West 40th Street, New York City.

The authors of the new arbitration law are Senators Juan Samper Sordo and Manuel F. Caamano, the former a member of the Inter-American Commercial Arbitration Commission. The Colombian National Committee of the Commission, under the chairmanship of Sr. Julio Caro, Director, Banco de la Republica, Bogota, has appointed a panel of arbitrators in Bogota, including prominent representatives of various professions and industries. The arbitration machinery thus provided, supported by the new law, is immediately available.

A provisional English translation of the new Colombian Arbitration Law follows:

Article I—The validity of an arbitration clause in contracts entered into by persons capable of contracting, is hereby recognized.

Article II—An arbitration clause is understood to be a provision whereunder the parties to a contract agree to submit to arbitration all or certain differences which may arise from such a contract.

Article III—The arbitrators may be appointed by the contracting parties or by a Chamber of Commerce or by any national or international organization authorized by the parties to appoint arbitrators.

Article IV—When the parties have agreed, in the contract, to appoint the arbitrators, each party shall appoint one arbitrator and these shall designate a third who, with the other two, shall constitute the arbitral tribunal. Once a tribunal is appointed, it shall proceed in conformity with articles 1218-1227 of the Judicial Code.

When the parties agree to submit their controversies to a Chamber of Commerce or other national or international organization, such Chamber or organization shall appoint the three arbitrators and they, once appointed, shall constitute the arbitral tribunal and shall proceed as provided in the preceding paragraph.

Article V—In the event that a controversy arises which, under an arbitration clause, is to be submitted to arbitrators appointed by the parties and one of the parties fails to appoint such arbitrator, the other party may, under article 325 of the Judicial Code, request him in writing to make such appointment notifying him at the same time of the name of the arbitrator already appointed; and if the defaulting party further fails to make his appointment within the three days following, the Court will appoint an arbitrator on his behalf, and such arbitrator, together with the arbitrator appointed by the party demanding arbitration, shall proceed as provided in article IV.

If the arbitration clause provides that the arbitrator shall be appointed by a Chamber of Commerce or other national or international organization, such Chamber or organization shall proceed with such appointment upon request of either party.

Article VI—Unless the arbitrators are authorized, either in the agreement to arbitrate, or in a subsequent agreement entered into before the first hearing, to decide in equity or to compromise the differences before them, their decisions shall be in law.

Article VII—The awards of arbitrators will be executed as soon as they are notified to the parties and they are without appeal. Their execution may be requested in the same manner as that of judgments of courts.

(*Note by Phanor J. Eder of the Law Review Committee.*)—Under the previously existing law in Colombia, agreements to submit future disputes to arbitration were in general, with a few exceptions, not enforceable.

Articles 1218 to 1227 of the Judicial Code, referred to in the foregoing law, provide in substance:

That upon acceptance of the appointment the arbitrators must meet as soon as possible, elect a Chairman from their own number and a Secretary and draw up appropriate minutes. The parties must deposit with the Chairman necessary funds for expenses. The Arbitration Tribunal fixes the date for appearance of the parties upon six days notice. The parties may appear in person or by attorneys. The tribunal hears the parties, examines witnesses and documentary evidence and hears arguments, and may call for additional evidence to be produced within a term of 12 days. Due minutes of all proceedings must be recorded. The award must be rendered within 12 days after the final hearing, unless the record be lengthy, in which case up to 20 days may be allowed. The award, in so far as practicable, must conform to the requirements for judgments of the courts and, like such judgments, may be clarified or amended. Notice of the award must be served personally on the parties. If they do not appear personally to receive notice within 6 days after the award is rendered, service of notice is made by publication. After service of notice and recording the award, the record is filed in a notarial office. If they accept appointment, arbitrators are under a legal duty to perform their duties; failure to do so makes them liable for damages. Arbitrators are not subject to challenge, but if they are guilty of accepting a bribe, the injured party may institute criminal proceedings against them.

Article 325 referred to in the law, provides that notices and formal demands and similar acts in which a judge intervenes, are to be served by notification of the order and exhibition of

such documents as are required by law. The person notified may, at the time of notice, or by separate instrument, make such observations as may be pertinent.

Report of the Pan American Society for 1937. The report of the Pan American Society for 1937 shows a wide diversity of activities. It has honored, at various meetings, distinguished representatives of Bolivia, Brazil, the Dominican Republic, Ecuador, Panama, Peru, Uruguay and Venezuela. It has paid tribute to statesmanship in awarding its insignia for the year to the Honorable Cordell Hull and to His Excellency Dr. Jose Carlos de Macedo Soares; and it paid the same tribute to education when the insignia was awarded to Dr. Lawrence A. Wilkins, Director of Foreign Languages of the Board of Education of New York. In presenting medals to students of Spanish in high schools the Pan American Society also does much to encourage and promote the interest of such students in Latin American relations. The Pan American Society is particularly to be congratulated on the educational aspect of its work, for the solid basis of friendly relations between the United States and the other American republics is founded upon education.

Draft Treaty on the Creation of an Association of American Nations. In accordance with the resolution of the Inter-American Conference for the Maintenance of Peace a project of a treaty creating an Association of American Nations has been submitted to the governments, members of the Pan American Union, with a view to its eventual presentation before the Eighth International Conference of American States meeting in Lima, Peru, in December 1938. The draft, prepared by the Governments of Colombia and the Dominican Republic, endorses the procedure of investigation, conciliation and arbitration in the settlement of controveries. With special reference to arbitration, the treaty embodies a far-reaching provision in that the only limitation placed upon the use of arbitration is that its application must be made to conflicts of an international character.

The draft, however, does not generally contemplate including among such conflicts questions which may arise between a foreign citizen, company or corporation, and a member state. In view of the growing number and importance of agreements between private corporations on the one hand and governments on the

other, it would seem regrettable if this class of controversies were excluded from a general system of arbitration in the final form of the plan.

Pan American Airways System Offers Student Travel Fellowships. Stimulated by the cordial reception accorded to its Travel Fellowship plan initiated last year, the Pan American Airways System is again offering the Fellowships, for the academic year 1938-1939, to Latin American students desiring to pursue graduate studies in the colleges and universities of the United States. One Fellowship is offered for each of the Latin American republics, and in each case it comprises round trip transportation to the United States over the System's airlines. The selection of successful candidates—strictly on the basis of aptitude and scholarship—and the American educational institutions in which they will pursue their studies, as well as the administrative details of the sojourn of the students in this country, are entrusted to the Institute of International Education in New York City, which enjoys great prestige throughout Latin America by reason of its disinterested objectives and high standards.

Public educational officials of the Latin American countries, as well as leading educators in the United States, have manifested their approval of the Fellowships as a medium of efficacy in promoting closer intellectual relations between the United States and other American republics.

Chambers of Commerce in Ecuador. The recent decree issued in the *Registro Oficial* of January 8, 1938, regulating the powers and duties of Chambers of Commerce in Ecuador, and providing for the establishment of additional Chambers, authorizes these organizations to hear disputes which may arise in commerce between Ecuadorian exporters or importers and foreign firms. The rules under which such arbitrations are to be held have not as yet been specified.

Eighth International Conference of American States. One of the reports to be made at this Conference, to be held at Lima, Peru, in December of this year, will concern the work of the Inter-American Commercial Arbitration Commission. The Commission has been operating under the standards of arbitration established by the Seventh International Conference at Montevideo

in 1933 and by reason of the authorization under Resolution XLI adopted by that Conference.

The standards of practice and procedure approved by the Conference, and deemed essential in rules and regulations used by trade and commercial organizations to the successful functioning of an American system, are the following:

(a) Agreements to arbitrate, whether relating to existing or future controversies, to be valid and enforceable, and where enforcement is not provided for by law, trade discipline is to be provided.

(b) Parties to have the power to designate arbitrators and to fill such vacancies or to provide a method therefor.

(c) Proceedings by *de facto* arbitrators to be more precisely defined by the parties or organization under whose auspices the arbitration is to be held.

(d) The full impartiality of the arbitrator to be provided for, with the right of challenge or removal, by the organization under whose auspices the arbitration is being conducted, in a manner provided for in the rules or regulations governing the proceedings.

(e) An uneven number of arbitrators to be provided for under the rules, all of whom are to participate in the proceedings from the beginning.

(f) Awards in all instances to be unanimous or by majority vote.

(g) Waiver of the right of appeal to be provided for in the rules, which shall be binding on the parties, and which will limit the ground for appeal to procedural matters and to such questions of law as both parties agree to submit to the court.

(h) The wider use of discipline by the organization whose members participate in an arbitration and refuse to abide by the award where the law is inadequate to compel performance of the terms of the award.

Spruille Braden Appointed Minister to Colombia. It is a fortunate circumstance that the Chairman of the Inter-American Commercial Arbitration Commission, the Hon. Spruille Braden, becomes United States Minister to Colombia at a time when a modern arbitration law has just gone into effect. Mr. Braden has been active on behalf of Inter-American Arbitration since his appointment as Chairman of the Commission in 1934, and is one of the foremost exponents of the cause of commercial peace in the Americas.

ARBITRATION LAW

PENNSYLVANIA ARBITRATION ACT INEFFECTIVE IN LABOR DISPUTES

BY

CLARENCE N. CALLENDER *

THE recent case of *Goldstein and Segal et al.* v. *International Ladies Garment Workers Union et al.*, decided by the Supreme Court of Pennsylvania in January Term, 1938, directs attention to certain limitations, as respect labor controversies, of the Pennsylvania Arbitration Act of 1927, which are deserving of comment. They challenge attention as to the feasibility of certain amendments of that act. The decision of the Common Pleas Court No. 2 of Philadelphia in this case was reported in the January 1938 issue of the JOURNAL. The Supreme Court has since reversed the lower court.

Briefly stated, the controversy grew out of a collective agreement between the Philadelphia Waist and Dress Manufacturers Association, an organization of employers, of which the defendants, Goldstein and Segal, were members, and the International Ladies Garment Workers Union and Joint Board of Waist and Dress Makers Union of Philadelphia. This agreement aimed to stabilize conditions in the needlework industry and contained a covenant that "No member of the Association shall move his factory or factories outside the City of Philadelphia during the life of the agreement." The agreement further provided that all

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complaints, disputes and grievances should be submitted to an impartial chairman named in the agreement and that his decision should be binding. While this agreement was in force the defendants, Goldstein and Segal, closed their Philadelphia plant, and thereafter confined their operations to a plant in Johnstown, Pennsylvania. The Union demanded arbitration under the terms of the agreement, and thereafter arbitration hearings were held. They resulted in an award in favor of the Union in which the arbitrator directed the reestablishment of the Philadelphia plant and the reemployment of the dismissed employees. This award was confirmed by the Common Pleas Court. During the hearings before the arbitrator and also before the court upon the motion to confirm the award, Goldstein and Segal contended that they were not bound by the collective agreement inasmuch as they had entered into a separate contract with the union and that under this separate agreement they were not prohibited from discontinuing their operations in Philadelphia. In denying their obligation under the collective agreement they put in issue any obligation thereunder to arbitrate. The award was confirmed notwithstanding and the questions on appeal turned upon the legality of the proceedings before the arbitrator and in the lower court. The Supreme Court, speaking through Justice Stern, reversed the decision of the lower court upon two grounds:

First, since the Arbitration Act of 1927, provides that "If the making of the arbitration agreement . . . . be at issue, the court shall proceed summarily to the trial thereof" and "if a jury trial be waived by the parties, the court shall hear and determine such issue", it was the duty of the lower court (a jury having been waived by the parties) to determine this issue as a prerequisite to the validity of any arbitration proceedings thereunder. Since the lower court had refused the employers' motion for this preliminary determination, the confirmation of the arbitrator's award was improper. The court remarked that "the arbitrator could not, in contravention of the statute, determine his own status and jurisdiction by finding that appellants [Goldstein and Segal] were bound by the contract under which he purported to act", and further, that the "appellants not only had a right under the statute but even a constitutional right to have that issue determined by a judicial tribunal".

Second, since the Arbitration Act provides that a judgment confirming an award "shall have the same force and effect in all respects as, and be subject to, all the provisions of law relating to a judgment in an *action at law*" and "may be enforced as such in accordance with the *existing law*", it was ruled that the lower court was without authority to issue an injunction based upon the award of the arbitrator. The court said, "Our statute was limited in the manner pointed out and unless and until it is amended there does not exist in Pennsylvania any statutory provision for the enforcement of arbitration awards other than those which could be made the subject of judgments in actions at law."

The opinion thus decides two important matters of interpretation of the Pennsylvania Act.

It seems that the court was clearly right in ruling that the lower court erred in failing to determine the existence of the agreement to arbitrate when that question was put in issue by the employers. The Act is clear in this connection and one is at a loss to understand why it was disregarded. Perhaps it is another example of the unfamiliarity of lawyers and judges with local statutes.

On the second point, also, it seems that the court was required to deny equitable relief under the Arbitration Act. In Pennsylvania, law and equity are distinct branches of jurisprudence, and accordingly the statement in the Act that the effect of a judgment on an award shall be that of "a judgment at law" seems to be controlling.

A review of the arbitration statutes of other states on this subject reveals that Rhode Island alone uses the language of the Pennsylvania Act. In seven states the statutes provide that the award when confirmed shall have the force and effect of "a judgment in an action" [1] and in two states the provision is, as "in civil actions".[2] In seven states the award, when confirmed, has the effect of a "judgment or decree".[3] In seven states it is provided that where the award requires the performance of any act other than the payment of money the court shall enforce the

[1] California, Louisiana, Nevada, New Jersey, New York, Ohio, Wisconsin.
[2] Minnesota, Missouri.
[3] Arkansas, Georgia, North Carolina, Utah, Virginia, West Virginia, Wyoming.

same by attachment or similar writ.[4] In Mississippi the award is such as would be rendered "in the circuit or chancery court". In Nebraska the statute is "not to be construed to affect in any manner the control of the . . . . court over the parties . . . . nor to impair or affect any action upon an award or upon any bond or other engagement to abide an award". Tennessee provides for execution "or other necessary process". The Massachusetts Act declares as appropriate for arbitration any demands which might be the subject of an "action at law or suit in equity" but does not otherwise indicate the effect of a judgment. The Texas statute provides for submission of existing disputes which, in labor controversies, must include an agreement "that the same may be specifically enforced in equity". The Connecticut Act expressly authorizes equitable relief in enforcing awards. In the remainder of the states the statutes fail to indicate whether judgments on awards are anything more than judgments for money damages, but Delaware and Iowa each provide that a judgment on an award is equivalent to "the verdict of a jury".

The conclusion to be drawn from this survey is that in a large number of states something more than a mere judgment for money damages is deemed desirable in arbitration matters. The matter should be called to the attention of the legislature of Pennsylvania and of other states as well. Since awards frequently call for the performance of acts other than the payment of money, it is difficult to perceive why the courts should not be permitted to grant remedies appropriate to the circumstances, including a decree in equity.

Another interesting question is suggested by the *Goldstein and Segal Case* although the matter seems to have escaped the attention of the parties and the court. May arbitration of labor disputes be had under the Pennsylvania Act? Section I provides that "A provision in any written contract, *except a contract for personal services*, to settle by arbitration . . . . shall be valid" etc. Justice Stern at one point says, "Even assuming for the moment

[4] Alabama (attachment or other appropriate writ), Illinois (by attachment or otherwise as for contempt), Indiana (by attachment), Kansas (as for contempt of court, either by attachment or execution), Michigan (subject to all the penalties of contemning an order of court), North Dakota (court to enforce judgment in manner provided for enforcing judgments of a similar nature), Florida (party failing to comply considered in contempt and shall be committed to prison there to remain without bail until he shall comply with order of court).

that the Arbitration Act of 1927 was applicable to the controversy, the proceedings were fatally defective. . . . ." This is the only indication in the opinion or in the briefs that this aspect of the matter was considered.

The writer has reluctantly come to the conclusion that the Pennsylvania Act of 1927 does not contemplate the arbitration of labor disputes. The conclusion is founded upon the words of the statute excluding "contracts for personal services" and upon information deemed reliable that this phrase was inserted in the original draft of the Act in legislative committee hearings at the instance of representatives of labor. There is no identical provision in the arbitration statute of any of the other states. The statutes of Arizona, New Hampshire, Ohio, Rhode Island and Wisconsin specifically exclude "collective contracts between employers and employees" or "contracts between employers and employees". Older statutes of Louisiana, Kansas and Montana make separate provision for the arbitration of labor disputes. Pennsylvania has some old but ineffective legislation on the subject. Such an important question as to the scope of the arbitration statute should be reconsidered by the legislature of Pennsylvania and the legislatures of other states and left no longer to judicial interpretation of existing arbitration statutes which were passed primarily to afford arbitration facilities in commercial disputes. A legislative policy should be clearly expressed.

In *obiter* remarks Mr. Justice Stern also observed that the union "could have compelled a common law arbitration under the terms of the agreement, and if the award called for injunctive relief, could have enforced it by appropriate proceedings in equity. The law is definitely settled that where parties to an executory contract agree that all disputes, arising in relation thereto, shall be first submitted to the arbitrament of one or more named persons, they are bound by the terms of submission . . . . *Gowen* v. *Pierson*,[5] *Bashford* v. *West Miami Land Co.*[6] In another place Justice Stern remarks, also *obiter*, "Attention is again directed to the fact that the enforcement of arbitration clauses in collective bargaining agreements, and of awards thereunder, are not dependent upon any act of assembly. The Arbitration Act of 1927 does not displace old time arbitration under the common law. *Isaacs* v. *Donegal etc. Insurance Co.*[7] In a proceeding by

[5] 166 Pa. 258.
[6] 295 Pa. 560.
[7] 301 Pa. 351.

bill in equity the court can determine whether appellants were parties to the agreement between the Union and the Association containing the provision for arbitration, and can specifically enforce any award that the arbitrator may make thereunder to the extent to which it could compel specific performance had the award been contractually agreed upon by the parties themselves." [8]

Apparently, the Justice was reluctant to conclude that there was no alternative procedure by which the issues in the case could have been met and he indicated that pertinent common law rules of arbitrations and awards afforded an alternative.

Prior to the Act of 1927 it was possible to have arbitration under the rules of the common law, which enforced arbitration in two types of cases: (1) where the parties agree under a submission naming the arbitrators to arbitrate an existing dispute; (2) where parties agree to arbitrate future disputes under an agreement naming the arbitrators. In both cases the court has refused to entertain a suit on behalf of one who has failed to carry out the terms of the agreement for arbitration. If need be an arbitration may proceed in the absence of the defaulting party to final award. In case of a money award, assumpsit may be brought to enforce it. The finding of the arbitrator, if properly made, is final. The resulting judgment is for the money awarded.[9] The Justice indicates that when the nature of the award requires it, injunctive relief would be available. The cases actually cited by him, however, involved money awards and injunctive relief was not necessary. The *Gowen Case* [10] was an *action of assumpsit* on an award and resulted in a judgment for damages. In the *Bashford Case*,[11] a bill in equity was brought for the *cancellation of an agreement* to purchase land in which there was an arbitration clause. The arbitration was held, but inasmuch as the award did not show that the vendor was able to convey a good title the court decreed the cancellation of the contract on behalf of the purchaser. The *Isaacs Case* [12] was an *action of assumpsit*

[8] It is interesting to contrast this statement with one of Justice Simpson in a later case, *Pittsburgh Union Stock Yards* v. *Pittsburgh Joint Stock Co.* (309 Pa. 314) that "most" of the old decisions on arbitration "have been relegated to the legal scrap-heap by the Act of April 25, 1927."

[9] Cf. Abersold, COMMERCIAL ARBITRATION IN PENNSYLVANIA.

[10] Note 5, *supra.*

[11] Note 6, *supra.*

[12] Note 7, *supra.*

on a fire insurance policy in which there was a provision for appraisal to determine fire loss. The parties followed the procedure provided by the terms of the policy and the court held no more than that the Act of 1927 did not displace "old time arbitration".

Justice Stern's remarks appear to contemplate that the named arbitrator might proceed *ex parte* as in any other case and that if he refused Equity might appoint a substitute. If the recalcitrant party were to contest the making of the agreement in proceedings to appoint a substitute or in proceedings to enforce an award, the chancellor would determine the existence of the challenged agreement to arbitrate and if he found for complainant, the arbitration would be ordered to proceed or decree would enter ordering enforcement of the award, as the case might be.

If such procedure is available, its greatest defect apparently lies in its lack of simplicity as compared with that provided by the Arbitration Act. The Act of 1927 was passed to simplify arbitration procedure. It overcomes at least some of the cumbersomeness of common law methods. It validates agreements to arbitrate future disputes whether or not arbitrators have been named in the agreement; it provides summary procedure for compelling arbitration; it provides a summary method for the selection of arbitrators; it authorizes the entry of judgment upon an award without the necessity of a new action, and clarifies many other matters relating to arbitration proceedings. It is now apparent that the Act has a certain defect if, as it seems to do, it excludes arbitration of labor disputes and restricts its procedure for enforcement of awards to those involving judgments at law. Under these circumstances the legislature should reconsider the scope of its Arbitration Act and amend it with a particularization of its scope on these matters, rather than let the slow process of judicial interpretation determine its scope. Common law arbitration in Pennsylvania is unsatisfactory in many particulars and the case law on the subject is confusing. It would be unfortunate if limitations in the Act of 1927 were to continue the necessity of resort to the old procedure.

REVIEW OF COURT DECISIONS

BY

WALTER J. DERENBERG

NEW YORK SUPREME COURT CASES

Union's Arbitration Agreement Unaffected by Change of Affiliation. Action to enjoin defendant from settling certain disputes by arbitration. A contract containing an arbitration clause was entered into between the parties while defendant was affiliated with the American Federation of Labor. Subsequent to the initiation of the contract, defendant severed its connection with the A. F. of L. and transferred its allegiance to the C. I. O. Plaintiff now contends that by so doing defendant changed its nature and in legal contemplation became a different entity, so that it can no longer enforce the arbitration agreement contained in the original contract. *Held*, action dismissed. It must be held that defendant is still the same union. Its identity, structure, operation, constitution, by-laws, officers and membership are still the same as they were when the agreement was made. Only its affiliation and name have changed. There is abundant authority for the proposition that a change of affiliation of a local union does not alter its identity. *World Trading Corp.* v. *Kolchin*, Sup. Ct., Spec. Term, Pt. I, N. Y. L. J., Jan. 20, 1938, p. 312, Schmuck, J.

Industrial Arbitration—Delivery of Arbitration Contract Not a Prerequisite to Its Enforceability. An employer and a Union had entered into a contract to arbitrate, which was to become effective when 75 per cent of the workers had joined the Union. The contract was signed by the employer but held by him in escrow. Motion by the Union to direct arbitration. *Held*, granted. It is not denied that 75 per cent of the workers have actually joined the Union. The employer claims that the arbitration agreement is unenforceable on the ground that a signed copy thereof was never delivered to the Union officials by him and that without such delivery the contract was ineffective. "Having heard oral testimony on the question of the existence of a contract to arbitrate, I find that such a contract was made. The written instrument, signed by the respondent (employer), but held by it in escrow, became effective when 75 per cent of the employees became members of the Union. That percentage did join the Union, and I find that the employer knew of that fact and acted upon the terms of the contract in recognition of its having come into force. The failure of respondent to turn over its signed copy to the Union officials was wrongful, but delivery of such copy was unnecessary to make the contract enforceable. The motion for arbitration is granted." *In re Textile Workers Organizing Committee*, Sup. Ct., Spec. Term, Part I, N. Y. L. J., Feb. 9, 1938, p. 679, Pecora, J.; also reported in Labor Relations Reports, Feb. 21, 1938.

Mere Reference in Subcontractor's Contract to a Standard Contractors' Contract Not an Arbitration Agreement. Motion to vacate an order to compel arbitration. The petitioning subcontractor had moved to compel arbitra-

tion of a dispute which had arisen between it and the respondent, its contractor. The application was granted on default. Petitioner now asks the court for an order to proceed with an inquest before an arbitrator appointed by it, while respondent by way of cross-motion asks for a motion vacating the default and denying the motion to compel arbitration, on the ground that no arbitration agreement exists between it and the petitioner. *Held*, respondent's cross-motion to vacate granted. Petitioner's original motion was based on a subcontractor's agreement called "The Standard Form of Subcontract", under which heading the following language appeared:

> For use in connection with the fourth edition of the standard form of agreement and general conditions of the contract.

None of the typewritten clauses in the agreement, either directly or by way of reference, conferred any right to arbitration. However, among the printed clauses, the following is found:

> The Contractor agrees (m) to give the Subcontractor an opportunity to be present and to submit evidence in any arbitration involving his rights. (n) To name as arbitrator under arbitration proceedings as provided in the General Conditions the person nominated by the Subcontractor, if the sole cause of dispute is the work, materials, rights or responsibilities of the Subcontractor; or, if of the Subcontractor and any other Subcontractor jointly, to name as such arbitrator the person upon whom they agree. The Contractor and the Subcontractor agree that—(o) In the matter of arbitration, their rights and obligations and all procedure shall be analogous to those set forth in this contract.

It is clear from this clause that it gives the subcontractor a right to arbitrate only if there exists an agreement for arbitration between the contractor and the owner. Only in that case has the subcontractor a right to appear and submit evidence in an arbitration proceeding between the owner and the contractor which affects the subcontractor's rights. Consequently, since neither the subcontractor's agreement nor the contract between the owner and the contractor contained an arbitration clause, no agreement exists in the present case. The clause (n) referred to *supra* concerns the standard contract which, in this case, was not entered into between the owner and the contractor. It follows that the court had no jurisdiction to make the order directing an arbitration so that the motion for an inquest must be denied and the cross-motion to vacate the order to compel arbitration granted. *Matter of Decatur Contracting Co., Inc.* (*Edward S. Murphy Bldg., Co., Inc.*), 2 N. Y. S. (2d) 970, 1938.

Scope and Effect of Section 1458, Subd. 2 as Amended—Service of Notice of Intention to Arbitrate.[1] Motion to direct trial of the issue as to whether

[1] The question of the scope and effect of the new Section 1458, Subdivision 2, of the C.P.A., which provides that if notice of intention to conduct the arbitration has been served personally upon the other party, the latter is required to raise the question of the existence of a valid submission or arbitration contract by motion within 10 days after service of notice, seems un-

or not there exists an arbitration agreement granted. The court said:

> The previous motion under section 1458, subdivision 2, was not on the merits, but a determination that the application for a stay was not timely made after personal service of the notice of intention to arbitrate and on the further ground that the arbitration had been completed. As there has been no disposition as to the alleged contract on the merits, the right to determine that issue is given to respondent.

Hesslein & Co., Inc., v. *Greenfield*, Sup. Ct., Spec. Term, Pt. I, N. Y. L. J., Feb. 2, 1938, p. 546, McGeehan, J.

Same.[1] Suit in equity to set aside an award. An arbitration was held before the Cotton Arbitration Board after notice of intention to arbitrate was served, as required by Section 1458, Subdivision 2. The respondent, although personally served, did not raise the question of the court's jurisdiction within the 10 days provided under the statute, but raises this question for the first time now after the award has been rendered. Respondent contends that the section of the statute is unconstitutional if it was intended to provide for an exclusive procedure. *Held*, motion to dismiss granted. *Schafran & Finkel, Inc.* v. *M. Lowenstein & Sons*, Schmuck, J.

Arbitrator's Appointment—Bias. Motion to vacate the appointment of an arbitrator. The moving party contends that one engaged in stockbrokering is "unconsciously" and unchangeably predisposed to the stockbroker's side on an issue between the broker and the customer "which no amount of factual argument can dislodge". *Held*, motion denied.

The allegation that a stockbroker is disqualified to act as arbitrator under such circumstances is opposed both to reason and authority and the appointment by the American Arbitration Association was therefore proper. *In re Hirsch, Lilienthal & Co.*, Sup. Ct., Spec. Term, Pt. I, N. Y. L. J., March 26, 1938, p. 1483, Fawcett, J.

NEW YORK COURT OF APPEALS

Judgment Entered upon Award of Arbitrators Allowing Damages for Fraud Not Discharged by Bankruptcy. The Court of Appeals has unanimously affirmed, without opinion, a decision of the Appellate Division, First Department, holding that a judgment entered upon an award of damages for fraud is not discharged by bankruptcy.

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settled, since the court's ruling in this case is inconsistent with the decision immediately reported hereafter. The latter case is now pending in the Appellate Division on appeal. In view of the fact that it is contended there that the new Section 1458 is unconstitutional, the American Arbitration Association, the General Arbitration Council of the Textile Industry and the Chamber of Commerce of the State of New York have filed a brief with the Appellate Division as *amicus curiae* through Messrs. Osmond K. Fraenkel, John K. Watson and Julius Henry Cohen.

[1] See footnote to previous case.

Bankruptcy Act, Section 17, subdivision 2 (United States Code, Tit. 11, § 35, subdivision second) provides: "A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as * * * (second) are liabilities for obtaining property by false pretenses or false representations * * * ." Special Term held that a consent to arbitrate the claim of fraud was a waiver of this provision, but the Appellate Division, in an opinion by Justice Callahan, unanimously reversed, citing Section 1463 (now Section 1466) of the Civil Practice Act, which provides: "The judgment so entered has the same force and effect, in all respects as, and is subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered" and *Jacobowitz* v. *Herson* (268 N. Y. 130, 136), in which Chief Judge Crane, writing for the unanimous Court, said: "We see no reason at this advanced stage of arbitration proceedings for treating the judgments entered upon the award of the arbitrator in any different way than judgments in actions are dealt with". On the basis of this statute and this decision, the Appellate Division held that the judgment on the arbitration award was not discharged by the bankruptcy proceedings.

As stated above, the Court of Appeals, without opinion, unanimously affirmed the decision of the Appellate Division.

The decision is a salutary one. It gives to a judgment entered on an arbitration award the same full force and effect that would be given to a similar judgment obtained after trial in a court of law. A contrary decision would have the unfortunate effect of discouraging arbitration by implying from a consent to arbitrate a waiver of the legal remedies to which the claimant would otherwise be entitled.

Counsel for the American Arbitration Association, the Chamber of Commerce of the State of New York and the General Arbitration Council of the Textile Industry, by leave of Court, filed a brief as *amici curiae* in the Court of Appeals in support of an affirmance of the decision of the Appellate Division. *Sadof* v. *Tannenbaum*, January 25, 1938 (13 N. E. (2d) 470, affirming 251 App. Div. 323).

SUPREME COURT OF NORTH CAROLINA

Parol Arbitration Agreement—Enforceability as Common Law Award as Distinguished from Statutory Award. Action to enforce an award. Plaintiff was a half-share tenant on defendant's land. A controversy arose as to the settlement of accounts and proceeds of sale of crops, whereupon an oral agreement was entered into between them to submit the case to an arbitrator. The arbitrator handed down an award in writing, in plaintiff's favor. Defendant thereafter denied that he had entered into a valid arbitration agreement. A jury found a verdict in favor of plaintiff and judgment was entered on the verdict. *Held*, affirmed. The defendant maintains that the Uniform Arbitration Act (chapter 94, Public Acts of 1927, Code 1935, 898 (a) to 898 (x)) prescribes an *exclusive* method for the determination of matters by arbitration, and that an oral arbitration agreement is invalid under that act. It is well settled, however, that statutes relating to arbitration, unless expressly exclusive of other methods, do not abrogate the com-

mon-law right, by contract, to submit matters in controversy to arbitration, and that the statutory methods of arbitration are to be regarded merely as constituting an enlargement on the common-law rule and are cumulative and concurrent rather than exclusive. Consequently, the Uniform Arbitration Act does not prevent parties from submitting a case to arbitration by parol and an award rendered in such a proceeding is not invalid. *Copney* v. *Parks*, 193 S. E. 21, 1937.

COURT OF CIVIL APPEALS OF TEXAS

Enforceability of an Award Granting Liquidated Damages—Right to Appeal. Suit by plaintiff to recover $25,000 as liquidated damages due him as result of defendant's refusal to abide by the terms of an award. Both parties were engaged in the administration of a large estate in connection with which many claims and controversies had arisen. In order to adjust these differences speedily and economically, the parties entered into an arbitration agreement which contained an extraordinary provision to the effect that all questions arising with regard to the performance of an award rendered thereunder or a breach thereof, should again be submitted to arbitration. It was further provided that in case the Board of Arbitrators should find that one of the parties had failed to comply with the award, such party should forfeit to the opposite party $25,000 liquidated damages. After the award was rendered, the defendant in this action failed to comply with it, and the Board of Arbitrators thereupon ruled that defendant had forfeited the $25,000 to the plaintiff. The Lower Court found for the defendant on the ground that the forfeiture of $25,000 constituted a penalty; and further that the agreement to arbitrate was against public policy since the parties had also agreed to waive all rights of appeal. *Held*, reversed. There is no merit in the contention that the agreement to arbitrate is against public policy, on the ground that the parties thereunder "oblige themselves to be bound thereby" and "waive all rights of appeal". Arbitration in this State has been recognized as an appropriate remedy for the settling of controversies. Formerly courts looked with jealousy upon arbitrations generally, and seemed to regard them as means or methods to oust the court of jurisdiction, but such is not the attitude today. Instead "it is the view now that the more intelligent judicial sentiment is strongly in favor of arbitration". After finding that under the facts of this case the stipulation concerning the forfeiture of $25,000 constituted a liquidated damage agreement and not a penalty, the Court held that the complaint stated a good cause of action for liquidated damages. *Ferguson* v. *Ferguson*, Court of Civil Appeals, 110 S. W. (2d) 1016, 1937.

U. S. DISTRICT COURT OF MARYLAND

Misconduct—Notice of Hearing and Right to be Heard—Motion to Confirm an Award and Cross-Motion to Vacate Same. The parties had agreed by correspondence that arbitration should be held in New York, that each party should appoint one arbitrator and that if they failed to agree, a third arbitrator should be selected by the two thus appointed. Three questions regard-

ing the quality of certain merchandise sold by plaintiff to the defendant and the right of the latter to reject the merchandise were submitted. The arbitrators found in favor of the defendant and this motion is brought to set aside the award on the ground that plaintiff had no notice of the time and place of the hearing and no opportunity to be present. It was established by the evidence that plaintiff in two letters had expressly requested that it be given notice of the time of meeting. The arbitrators, however, ignored this request on the ground that they had the contract samples and were able to decide the case through inspection of those samples and that the presence of the parties would unnecessarily "complicate" the matter. *Held,* motion to vacate the award granted. Both under sections 10 (c) and (d) of the Federal Arbitration Act, here invoked, and under the Common Law, it is well settled that the function of an arbitrator is judicial in nature and that a refusal of arbitrators to give notice of the hearing constitutes misconduct invalidating the award.

It is true, as pointed out by defendant, that where the arbitration is in reality only a reference to experts to determine the intrinsic quality or value of an object, upon their own knowledge as experts, notice is not necessary, as the reference is then more in the nature of an appraisal than an arbitration. However, this exception does not apply here, since the arbitrators had not only to decide the question of quality, but also the right of the defendant to reject the merchandise. "This made the arbitration a general one, not limited to a mere appraisal of quality by experts." *The Seldner Corporation* v. *W. R. Grace & Co.,* District Court of Maryland, Feb. 23, 1938, 22 Fed. S. 388.

SUPREME COURT OF PENNSYLVANIA

Enforcement of Award—Run-Away Shop. For a discussion of this case see special article by Professor Callender in this issue (page 193). *Joseph Goldstein, et al.,* v. *International Ladies' Garment Workers' Union, et al.,* Supreme Court of Pennsylvania, Jan. 12, 1938.

NOTES AND COMMENT

Coordination of Arbitration Activities of Bar Groups. On January 17, 1938, a conference arranged by the Hon. Pelham St. George Bissell, President Justice of the Municipal Court of the City of New York, was held at the offices of the American Arbitration Association for the purpose of coordinating the activities of the various arbitration committees and municipal court committees of the several lawyers' associations in New York City.

Judge Bissell outlined to the committee members present the gratifying accomplishments toward relieving the congestion of court calendars through the settlement of pending matters by arbitration and conciliation and emphasized his belief that greater

results might be accomplished through the coordination of the activities of the various committees with those of the American Arbitration Association, whose facilities are available to attorneys and clients having matters pending on the calendars of the New York courts.

H. H. Nordlinger, Chairman of the Arbitration Committee of the Association of the Bar of the City of New York, advised the conference of the revision and distribution by his Committee of a pamphlet entitled "An Outline of Arbitration Procedure", in which it is urged that members of the Association use the arbitration facilities of the Committee and of the American Arbitration Association.

A. Alan Lane, Chairman of the Municipal Court Committee of the New York County Lawyers' Association, reported on the recent activities of his Committee, which included the sending of a communication to every member of that Association, recommending the use of arbitration and conciliation to relieve the congested calendars of the Municipal Court, the Committee's purpose being to carry on conciliation activities and to use the facilities of the American Arbitration Association for the arbitration of disputes and claims.

Those present at the meeting, in addition to the above, included Alfred L. Rose, Chairman of the Municipal Court Committee of the Association of the Bar; Heiman Wiener, Chairman, Municipal Court Committee of the Bronx County Bar Association; Moses H. Grossman, Chairman, Committee on Arbitration and Conciliation, New York County Lawyers' Association; Joseph A. Aisley, Secretary, New York County Lawyers' Association; Leonard Friedman, Chairman, Municipal Court Committee of the Queens County Bar Association; William Liebermann and Robert Abelow, Chairman and Vice Chairman, Arbitration Committee, Brooklyn Bar Association, and representatives of the American Arbitration Association.

The Lawyer and Peaceful Industrial Change. The New York County Lawyers' Association, through its Committee on Arbitration and Conciliation, of which Moses H. Grossman is Chairman, is enlisting the cooperation of its members in what it considers an increasingly important field of practice for lawyers, namely industrial relations. Under date of February 23, 1938, the Chairman of the Committee addressed a letter to all members of the

Association in which he stated, "The legally enforceable labor contract is here to stay, every conceivable kind of contract is being drawn, many of them having arbitration clauses which contemplate procedure under the New York Arbitration Law with legally valid awards. It has seemed to our Committee that our Association has a unique opportunity to help organize this procedure which, at the present time, is in a state of confusion and groping."

To assist the Committee in the coordination of its efforts along the lines of peaceful change in industrial relations and to preserve goodwill, confidence and cooperation between industry and labor, members of the Association have been invited to: (1) submit copies of any arbitration clause or rules of procedure used in labor agreements; (2) furnish the Committee with any types of questions which have been submitted to mediation or arbitration; (3) indicate their willingness to collaborate with the Committee in considering standards for making labor contracts legally effective through arbitration. A copy of the pamphlet describing the Voluntary Industrial Arbitration Tribunal of the American Arbitration Association was sent to each member as indicating the trend of the Committee's thought in this direction.

AWARDS AND LOVE-DAYS

It is called an *Arbitrament*, because that the Parties have willingly submitted their Differences to others, to determine them arbitrally, and according to their own Opinions and Judgments, as honest and disinterested Men, and not according to Law. It is called an *Award* from the *French* Word *Agarder*, which signifies to *judge* or *decide;* and it has heretofore been called *Love-Day*, because of the Quiet and Tranquillity which usually followed the Ending of the Controversy.—*The Compleat Arbitrator* (1731).

BOOK REVIEWS AND NOTES

The Contribution of English Equity to the Idea of an International Equity Tribunal. By Dr. Wolfgang Friedmann. 1935.

William Ladd: An Examination of an American Proposal for an International Equity Tribunal. By Georg Schwarzenberger. 1936.

Justice and Equity in the International Sphere. By Professors Norman Bentwich (Jerusalem), A. S. DeBustamante (Habana), Donald A. McLean (Washington), Gastav Radbruch (Heidelberg) and H. A. Smith (London). 1936.

Published for the New Commonwealth Institute by Constable & Co. (London).

The idea of creating an Equity Tribunal for the amicable settlement of international disputes has been repeatedly voiced long before the World War, and with particular force since its termination and since the establishment of the Permanent Court at The Hague. In view of the fact that the Court is concerned only with the settlement of *legal* disputes by applying *legal* principles, there still exists in the field of international relations a gap with regard to all controversies which are political rather than legal in their nature and which cannot be decided according to any established principles of law. For many years, therefore, there has been a demand for the establishment of an International Equity Tribunal which would have the power to render enforceable decisions and awards in all those cases in which the Permanent Court could not successfully be invoked.

Outstanding among the organizations which have advocated this idea is the New Commonwealth Society in England, which has as its specific and exclusive object the promotion of "International Law and Order through the Creation of an Equity Tribunal and an International Police Force". Not only is the periodical which the Society publishes quarterly, "The New Commonwealth Quarterly", devoted to a study of this plan, but the New Commonwealth Institute has, in addition, published a series of monographs on the feasibility of the creation of such a Tribunal and its potential scope and powers. During the short period

of 1935-36 the above three monographs were published by the Institute, followed shortly thereafter by another monograph by Professor Karl Strupp on "Legal Machinery for Peaceful Change", which was reviewed in the last issue of THE JOURNAL.

There can be no doubt that if there ever was a time when an International Arbitration Court was needed, we are living in such an era today. It appears important and timely, therefore, to call attention to these three monographs which, each in a different way, offer a partial solution to this most difficult of all problems of international law.

The Contribution of English Equity to the Idea of an International Equity Tribunal, the first of the series, and from a legal point of view the most interesting of the three, does not deal with the powers of a proposed equity court to settle *political* disputes, but discusses the application of the general maxims of English equity, as developed by Chancery in the last few centuries, to legal controversies between nations. The author feels that there exists a close analogy between the present undeveloped state of international law and the primitive state of common law as it was found and applied when chancery first intervened. Dr. Friedmann, in discussing the principles of equity in their relation to the proposed International Equity Tribunal, does not use the term "equity" in its general meaning as referring to a decision *ex aequo et bono;* he examines equity and its principles in their legal meaning, rather—that is, as legal rules established by hundreds of precedents and constituting part of the common law as such. In this attempt Dr. Friedmann's book must be considered the first of its kind. Each one of the famous maxims such as: "He who seeks Equity must do Equity"; or "Equity aids the vigilant" and many others are examined with a view to testing their applicability to international disputes. A reading of this valuable monograph reveals that practically all of these equitable principles have been successfully invoked in international disputes.

Dr. Schwarzenberger's book on *William Ladd* should prove of particular interest to the American reader, in view of the fact that it deals with the first important effort made by an American citizen to join all civilized nations in one Congress of Nations. It is just about 100 years ago that William Ladd presented to the Senate of the State of Massachusetts a petition in the name of the American Peace Society proposing the establishment of an

International Equity Tribunal. When a Committee of the Massachusetts Senate considered the proposal the following resolution was passed: "That in the opinion of this legislature, some mode should be established for the amicable and final adjustment of all international disputes, instead of resorting to war."

The most striking feature in Ladd's petition, in the author's opinion, was the fact that his suggestion was in no way limited to an International Court for so-called "justiciable" disputes. In his own words: "Some mode of just arbitration should be established for the amicable and final adjustment of *all* international disputes instead of an appeal to arms." In other words, controversies of a political character involving a change of the *status quo*—territorial or otherwise—between nations would come within the jurisdiction of the International Tribunal as proposed by Ladd. It is apparent, therefore, at the outset that the concept of Equity as used in Dr. Schwarzenberger's book is an entirely different one from that used in Dr. Friedmann's book. Contrary to the latter's task, no attempt is made here to discuss the applicability of the existing doctrines of equity law to international disputes. As a matter of fact, the author takes it for granted that, so far as purely legal disputes are concerned, the Permanent Court of International Justice is fitted to decide such matters satisfactorily by applying the prevailing standards and rules of international law.

The real object of the book, therefore, is the establishment of an independent Chancery Division of the Permanent Court. Numerous problems, of course, immediately arise: What rules ought to be applied by such a Tribunal? How should the judges be appointed? And, most important: How should such an award be enforced? Again, if the award is to serve as meeting "the requirements of a just peace by the maintenance or non-maintenance of a given situation or legal position" it could be vested with the *indicia* of *"res adjudicata"*, since it is obvious that a decision which may seem equitable and just at the time it is rendered may result in great injustices at a later date. Therefore, some means for rehearing or review would have to be provided in order to obviate this situation. Dr. Schwarzenberger, in discussing Ladd's proposal, does not close his eyes to all these obstacles, but feels that slow but constant progress is being made in the direction of achieving more effective and peaceful settlement of political controversies, even where such controversies

cannot be solved by applying those principles of law which govern legal disputes.

Different from both monographs discussed heretofore, *Justice and Equity in the International Sphere*, set up in the form of a symposium by internationally known scholars in the field of international law, is a survey of the ways and means in which some existing tribunal or courts have tried to decide international or interstate disputes by applying equitable principles. Of particular interest to the American reader is an article by Professor Herbert Arthur Smith on "Interstate Disputes in the American Supreme Court". It is strikingly shown here that the Federal Supreme Court has been faced on various occasions with much the same problems that are discussed in a hypothetical and theoretical way in Dr. Schwarzenberger's book. As Professor Smith shows, the Supreme Court has always carefully avoided the issue by emphasizing that such political controversies are not justiciable in character.

Professor DeBustamante discusses in a separate article the first true Court of International Justice which was established in 1907 by agreement between the five Central American republics. He discusses a few interesting cases that came up for decision during the ten years the Court existed.

Another interesting article, by Professor Norman Bentwich, is devoted to the rôle of Equity in the Jurisdiction of the Judicial Committee of the Privy Council, which has functioned in many instances as the final arbiter in matters involving the interpretation of the Canadian Constitution or other disputes involving the functions and powers of the Dominion. In connection with the creation of an International Equity Tribunal for political disputes it is worthwhile noting, as Professor Bentwich points out, that the Judicial Committee has, since an early date, been invoked in numerous cases in order to give advice on boundary and other territorial disputes between different parts of the British Empire. "Here is", as Professor Bentwich points out, "a precedent for the judicial settlement of the most vexed questions between nations, and a precedent which has worked happily for centuries."

In addition to the aforementioned articles, Professor Radbruch discusses Justice and Equity in International Relations from a philosophical point of view, while the Reverend Donald

A. McLean, in a concluding article, deals with the same problem "From the Christian Point of View".

The New Commonwealth Institute and its collaborators deserve profound appreciation and high praise for their efforts to contribute, through these monographs and their other publications, to a gradual improvement of the relationship between the various nations by finding new ways and means for pacific settlement of legal and political disputes.—WALTER J. DERENBERG.

PERIODICAL LITERATURE

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